

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ILLINOIS

_____)	
UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No. 99-cv-063
PHARMACIA LLC)	
(f/k/a MONSANTO CO.),)	
SOLUTIA INC.,)	
CERRO FLOW PRODUCTS LLC)	
(f/k/a CERRO COPPER PRODUCTS INC.),)	
and EXXONMOBIL OIL CORPORATION,)	
)	
Defendants.)	
_____)	

CONSENT DECREE FOR REMEDIAL DESIGN/REMEDIAL ACTION
AND RECOVERY OF RESPONSE COSTS
FOR OPERABLE UNIT 1
SAUGET AREA 1 SUPERFUND SITE

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	JURISDICTION	5
III.	PARTIES BOUND	5
IV.	DEFINITIONS	5
V.	GENERAL PROVISIONS	12
VI.	PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS	13
VII.	REMEDY REVIEW	15
VIII.	PROPERTY REQUIREMENTS	15
IX.	FINANCIAL ASSURANCE	18
X.	PAYMENTS FOR RESPONSE COSTS	21
XI.	DISBURSEMENT OF SPECIAL ACCOUNT FUNDS	23
XII.	INDEMNIFICATION AND INSURANCE	27
XIII.	FORCE MAJEURE	28
XIV.	DISPUTE RESOLUTION	29
XV.	STIPULATED PENALTIES	31
XVI.	COVENANTS BY THE UNITED STATES	35
XVII.	COVENANTS BY SETTLING DEFENDANTS	36
XVIII.	EFFECT OF SETTLEMENT; CONTRIBUTION	39
XIX.	ACCESS TO INFORMATION	40
XX.	RETENTION OF RECORDS	42
XXI.	NOTICES AND SUBMISSIONS	42
XXII.	RETENTION OF JURISDICTION	46
XXIII.	APPENDICES	46
XXIV.	MODIFICATION	46
XXV.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	46
XXVI.	SIGNATORIES/SERVICE	47
XXVII.	FINAL JUDGMENT	47

I. BACKGROUND

A. This Remedial Design/Remedial Action (“RD/RA”) and cost recovery consent decree between the United States and the Settling Defendants (“SDs”) Pharmacia LLC (“Pharmacia”), Solutia Inc. (“Solutia”), ExxonMobil Oil Corporation (“ExxonMobil”), and Cerro Flow Products LLC (“Cerro”), and Settling Non-Performing Owners Ruan Transport Corp. (“Ruan”), the Estate of Harold W. Weise, Wiese USA, Inc. (collectively, “Weise”), and the Doris M. Tolbird Revocable Living Trust #1 implements the remedy set forth in EPA’s September 23, 2013 Record of Decision involving Operable Unit 1 (“OU 1”) of the Sauget Area 1 Superfund Site in Sauget and Cahokia, Illinois. OU 1 of Sauget Area 1 is comprised of contaminated soils, sediments, and surface water, including groundwater and surface water contamination source areas. This consent decree does not address contaminated groundwater at the Site. EPA intends to address Sauget area-wide groundwater contamination in Sauget Areas 1 and 2 as a separate operable unit after the groundwater contamination source remedies are implemented in this decree for Sauget Area 1 - OU 1 and a future RD/RA decree for adjoining Sauget Area 2 - OU 1.

B. EPA and the State, through the Illinois Environmental Protection Agency (“IEPA”), have been investigating the Sauget Area 1 Site since the early 1980s. The Sauget Area 1 Site consists of three closed landfills (Sites G, H, and I); two former surface impoundments (Site L); one flooded borrow pit (Site M); one filled borrow pit (Site N); and a stream known as Dead Creek and its Creek Segments (“CS”) A through F. In the fall of 1995, EPA completed a CERCLA removal action at Site G of the Sauget Area 1 Site.

C. On January 28, 1999, the United States of America (“United States”) filed a Complaint against Pharmacia, Solutia, Cerro, ExxonMobil, and other potentially responsible parties (“PRPs”), asserting claims under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607(a). Through the Complaint, the United States sought to recover all of the costs it incurred in responding to the release or threatened release of hazardous substances at and from the Site G portion of the area designated by EPA as Sauget Area 1 in St. Clair County, Illinois.

D. On March 15, 2000, Solutia filed a counterclaim against the United States and a third-party claim against numerous third-party defendants, in which Solutia sought contribution, pursuant to CERCLA § 113(f), 42 U.S.C. § 9613(f), towards the costs it had incurred and would incur in the future in responding to the release or threatened release of hazardous substances throughout all of Sauget Area 1. On August 30, 2000, the United States, on behalf of EPA, filed an amended complaint pursuant to Section 107 of CERCLA, against, *inter alia*, settling defendants Pharmacia, Solutia, Cerro, and ExxonMobil, and settling non-performing owners Weise and Ruan, seeking to recover response costs incurred by EPA at the Sauget Area 1 Site.

E. From 1901 to 1997, Pharmacia Corporation (formerly known as Monsanto Ag Company) owned and operated what came to be known as the Queeny Plant located in St. Louis, Missouri. From 1917 to 1997, Pharmacia Corporation owned and operated what came to be known as the Krummrich Plant in Sauget, Illinois.

F. In 1997, Pharmacia spun-off its chemical manufacturing business that included the Queeny and Krummrich plants, to Solutia Inc. Solutia is the current owner of the Krummrich plant and associated real property. Solutia and Pharmacia entered into an indemnification agreement whereby Solutia assumed financial responsibility for certain existing environmental claims against Pharmacia, including claims under CERCLA with respect to, *inter alia*, the Sauget Area 1 Site (as defined below and depicted on the map in Appendix A).

G. In February 2000, Monsanto Ag Company was incorporated as a wholly-owned subsidiary of Pharmacia. In March 2000, Pharmacia merged with Pharmacia & Upjohn Inc. and changed its name to Pharmacia Corporation. In March 2000, Monsanto Ag Company changed its name to Monsanto Company (hereinafter “New Monsanto”). Pharmacia Corporation was purchased by Pfizer Inc. in April 2003 and is maintained as a wholly-owned subsidiary of Pfizer Inc. In 2012, Pharmacia Corporation converted to a limited liability company and changed its name to Pharmacia LLC.

H. Pursuant to the September 1, 2000 Separation Agreement between New Monsanto and Pharmacia, New Monsanto indemnified Pharmacia for certain liabilities, including environmental liabilities related to the Sauget Area 1 Site, to the extent that Solutia fails to pay, perform, or discharge those liabilities.

I. On September 9, 1998, EPA issued special notice to 26 PRPs, including Settling Defendants Pharmacia, Solutia, Cerro, and ExxonMobil.

J. On January 21, 1999, EPA entered into an Administrative Order on Consent (“AOC”) with Solutia and Pharmacia requiring them to conduct an Engineering Evaluation and Cost Analysis (“EE/CA”) for the Sauget Area 1 Site source areas (Sites G, H, I, L, M, and N) and the impacted portions of Dead Creek, and to conduct a Remedial Investigation and Feasibility Study (“RI/FS”) pursuant to 40 C.F.R. § 300.430 for the Sauget Area 1 groundwater. Pharmacia and Solutia undertook the investigation work under the AOC. EPA provided oversight for the work done under the AOC.

K. On June 21, 1999, EPA issued to Pharmacia and Solutia a Unilateral Administrative Order (“UAO”) pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), requiring investigation and repair of Dead Creek culverts at the Sauget Area 1 Site. On May 31, 2000, EPA supplemented the UAO to include removal of contaminated sediments and soils from certain locations in and around Dead Creek, which order was amended on August 29, 2001 to include additional Dead Creek segments. Pharmacia and Solutia undertook work under the UAO with EPA oversight.

L. On January 9, 2003, EPA sent an Additional Work Letter to Pharmacia and Solutia, which required them to study Dense Non-Aqueous Phase Liquids (“DNAPL”) contamination at the Sauget Area 1 Site pursuant to the AOC, and to prepare a DNAPL Characterization and Remediation Study/Investigation (“Additional Work Letter”).

M. The Site has been proposed for placement on the National Priorities List (“NPL”), 40 C.F.R. Part 300, Appendix B.

N. On October 9, 2003, the United States District Court for the Southern District of Illinois entered a “Stipulation on Liability of Defendants Pharmacia, Solutia, ExxonMobil, Cerro, Ruan, Harold Wiese and Wiese Planning and Engineering Under Section 107 of CERCLA” (“Stipulation”) regarding Sauget Area 1 Response Costs.

O. Pharmacia and Solutia stipulated to joint and several liability for certain Response Costs incurred and to be incurred by the United States as set forth in the Stipulation.

P. Cerro, ExxonMobil, Harold Wiese, Wiese Planning and Engineering, and Ruan Transport Corp. stipulated to liability for Response Costs incurred and to be incurred by the United States as set forth in the Stipulation.

Q. Pharmacia and Solutia have entered into settlements with Harold W. Wiese, Wiese Planning & Engineering, Ruan Transport Corp. and others addressing certain liabilities at the Sauget Area 1 Site. Harold W. Wiese died in 2005 and his estate was substituted as a defendant in the action in that year. Wiese Planning & Engineering, Inc. has changed its name to Wiese USA, Inc.

R. On December 17, 2003, Solutia filed a voluntary petition under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101-1330, in the United States Bankruptcy Court for the Southern District of New York under Case No. 03-17949 (PCB). The Court approved Solutia’s Plan of Reorganization on November 29, 2007. The Plan addresses Solutia’s liabilities associated with the Sauget Area 1 Site. Solutia emerged from bankruptcy in February 2008.

S. On December 15, 2009, the Court entered a consent decree between the United States and Settling Defendants Pharmacia, Solutia, Cerro, and ExxonMobil, among others, wherein the Defendants agreed to pay \$4,350,000.00 in reimbursement of past response costs related to the Sauget Area 1 Site.

T. On September 29, 2011, the Parties stipulated to the dismissal of this action without prejudice.

U. Pharmacia and Solutia completed a RI/FS Report on November 6, 2012, which updated an RI/FS Report previously submitted on November 13, 2009.

V. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the Feasibility Study and of the proposed plan for remedial action on February 27, 2013, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Director of the Superfund Division, EPA Region 5, based the selection of the response action.

W. The decision by EPA on the remedial action to be implemented for OU 1 at the Site is embodied in a final Record of Decision (“ROD”), executed on September 24, 2013, on which the State had a reasonable opportunity to review and comment and on which the State has

given its concurrence. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan, as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

X. In accordance with the National Contingency Plan, 40 C.F.R. Part 300 ("NCP") and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Illinois (the "State") on June 12, 2014, of negotiations with PRPs regarding the implementation of the RD/RA for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree. The State, through the IEPA, has not objected to this Consent Decree.

Y. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Fish and Wildlife Service on June 12, 2014, of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.

Z. EPA also notified the Illinois Department of Natural Resources and IEPA of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under state trusteeship and encouraged these trustees to participate in the negotiation of this Consent Decree.

AA. The Settling Defendants and Settling Non-Performing Owners that have entered into this Consent Decree do not admit any liability to the United States arising out of the transactions or occurrences alleged in the complaint other than as set forth in the Stipulation signed by the Court on October 9, 2003.

BB. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by Settling Defendants if conducted in accordance with this Consent Decree and its appendices.

CC. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the ROD and the Work to be performed by Settling Defendants shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

DD. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over SDs. Solely for the purposes of this Consent Decree and the underlying complaint, SDs waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. SDs shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, upon SDs and their successors and assigns, and upon Settling Non-Performing Owners and their heirs, successors and assigns. Any change in ownership or corporate or other legal status of a SD including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such SD's responsibilities under this Consent Decree.

3. SDs shall provide a copy of this Consent Decree to each contractor hired to perform the Work and to each person representing any SD with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. SDs or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work. SDs shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply solely for purposes of this Consent Decree:

- a. "Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions, and/or Institutional Controls are needed to implement the Remedial Action, including, but not limited to, the properties on which Sites G, H, I, L, M, N, Dead Creek and Borrow Pit Lake are located.
- b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

- c. “Consent Decree” or “CD” shall mean this Consent Decree and all appendices attached hereto (listed in Section XXIII). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.
- d. “Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.
- e. “DOJ” shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of the United States.
- f. “Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.
- g. “EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.
- h. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- i. “Future Oversight Costs” shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising SDs’ performance of the Work to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing deliverables submitted pursuant to this Consent Decree, as well as costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include, *inter alia*: the costs incurred by the United States pursuant to ¶ 11 (Emergencies and Releases), Section VII (Remedy Review), Section VIII (Property Requirements), and ¶ 24 (Access to Financial Assurance by EPA), or the costs incurred by the United States in enforcing this CD, including all costs incurred pursuant to Section XIV (Dispute Resolution), and all litigation costs.
- j. “Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Consent Decree, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to ¶ 11 (Emergencies and Releases), ¶ 12 (Community Involvement) (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), ¶ 24 (Access to Financial Assurance by EPA), Section VII (Remedy Review), Section VIII (Property Requirements) (including the cost of attorney time and any monies paid to secure access and/or to secure, implement, monitor, maintain, or enforce Institutional Controls or enforce access or land, water, or other resource use restrictions, including the amount of just compensation), and

Section XIV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs SDs have agreed to pay under this CD that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from April 1, 2015 to the Effective Date.

- k. "IEPA" shall mean the Illinois Environmental Protection Agency and any successor departments or agencies of the State.
- l. "Institutional Controls" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, or other resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.
- m. "Institutional Control Implementation and Assurance Plan" or "ICIAP" shall mean the plan for implementing, maintaining, monitoring, and reporting on the Institutional Controls set forth in the ROD, prepared in accordance with the SOW.
- n. "Interim Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, (a) paid by the United States in connection with the Site between April 1, 2015 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.
- o. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- p. "Interest Earned" shall mean interest earned on amounts in the Sauget Area 1 Remediation Account, which shall be computed monthly at a rate based on the annual return on investments of the EPA Hazardous Substance Superfund. The applicable rate of interest shall be the rate in effect at the time the interest accrues.
- q. "Municipal Solid Waste" or "MSW" shall mean waste material: (a) generated by a household (including a single or multifamily residence); or (b) generated by a commercial, industrial, or institutional entity, to the extent that the waste material (1) is essentially the same as waste normally generated by a household; (2) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (3) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

- r. “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
- s. “Non-Settling Owner” shall mean any person, other than an Owner SD or Settling Non-Performing Owner, that owns or controls any Affected Property. The clause “Non-Settling Owner’s Affected Property” means Affected Property owned or controlled by Non-Settling Owner.
- t. “Settling Non-Performing Owners” shall mean Ruan Transport Corp., the Estate of Harold W. Wiese and its Executor, Wiese USA, Inc. (f/k/a Wiese Planning and Engineering, Inc.), and the Doris M. Tolbird Revocable Living Trust #1.
- u. “Operable Unit 1” or “OU 1” consists of the soil, sediments, and surface water, including the groundwater contamination source areas, at the Sauget Area 1 Site, as defined in subparagraph 4.ii. of this Consent Decree. Operable Unit 1 does not include groundwater contamination or Sauget Area 2.
- v. “Operation and Maintenance” or “O&M” shall mean all activities required to operate, maintain, and monitor the effectiveness of the RA as specified in the SOW or any EPA-approved O&M Plan.
- w. “Owner SDs” shall mean Solutia and Cerro.
- x. “Paragraph” or “¶” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.
- y. “Parties” shall mean the United States, Settling Defendants, and Settling Non-Performing Owners.
- z. “Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through March 31, 2015, plus Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date.
- aa. “Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the ROD and the SOW and any modified standards established pursuant to this Consent Decree.
- bb. “Pre-Achievement O&M” shall mean all operation and maintenance activities required for the Remedial Action to achieve Performance Standards, as provided under the Operation and Maintenance Plan approved or developed by EPA pursuant to Section VI (Performance of the Work by Settling Defendants) and the SOW, and maintenance, monitoring, and enforcement of Institutional Controls as provided in the ICIAP, until Performance Standards are met.

- cc. “Post-Achievement O&M” shall mean all activities required to maintain the effectiveness of the Remedial Action after Performance Standards are met, as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to Section VI (Performance of the Work by Settling Defendants) and the SOW, and maintenance, monitoring, and enforcement of Institutional Controls after Performance Standards are met, as provided in the ICIAP.
- dd. “Proprietary Controls” shall mean easements or covenants running with the land that (a) limit land, water, or other resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.
- ee. “RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).
- ff. “Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to OU 1 at the Sauget Area 1 Site signed on September 24, 2013 by the Regional Administrator, EPA Region 5, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix B.
- gg. “Remedial Action” or “RA” shall mean the remedial action selected in the ROD.
- hh. “Remedial Design” or “RD” shall mean those activities to be undertaken by SDs to develop final plans and specifications for the RA as stated in the SOW.
- ii. “Sauget Area 1 Site” or “Site” means the geographic area so named and identified by EPA, located within the corporate limits of the Village of Sauget, Illinois and extending into the adjoining Village of Cahokia, Illinois, and depicted generally on the map attached hereto as Appendix A. It includes the areas described in subparagraphs 4.ii.a through g of this Consent Decree as well as the areal extent of contamination in soils, sediment, surface water and groundwater released therefrom, except that, for the purposes of this Consent Decree, the Sauget Area 1 Site does not include groundwater and does not include the Sauget Area 2 Site, or soils, sediments, surface water, or groundwater of the Sauget Area 2 Site. Specifically, Sauget Area 1 Site contains the following source areas and creek segments:
 - a. “Site G,” depicted generally on the map attached hereto as Appendix A, consists of several different parcels of land encompassing approximately five acres of land, located south of Queeny Avenue, east of (and possibly under) the Wiese property, and north of a cultivated field in the Village of Sauget, and west of Dead Creek CS-B and all the areal extent of contamination in soils, sediments, surface water, and groundwater released from Site G.

- b. "Site H," depicted generally on the map attached hereto as Appendix A, consists of approximately five to seven acres of land located south of Queeny Avenue, west of Falling Springs Road, and north and east of Site L in the Village of Sauget, Illinois, and all the areal extent of contamination in soils, sediments, surface water, and groundwater released from Site H.
- c. "Site I," depicted generally on the map attached hereto as Appendix A, consists of approximately 19 acres of land located north of Queeny Avenue, west of Falling Springs Road and south of the Alton & Southern Railroad in the Village of Sauget, Illinois, and includes all the areal extent of contamination in soils, sediments, surface water, and groundwater released from Site I.
- d. "Site L," depicted generally on the map attached hereto as Appendix A, consists of approximately four acres of land and is located immediately east of Dead Creek CS-B and south of Queeny Avenue in the Village of Cahokia where two or more surface impoundments were formerly operated, and includes all the areal extent of contamination in soils, sediments, surface water, and groundwater released from Site L.
- e. "Site M," as depicted generally on the map attached hereto as Appendix A, is a former sand mining pit located along the eastern side of Dead Creek CS-B, south of Site L, at the western end of Walnut Street in the Village of Cahokia, Illinois, and includes all the areal extent of contamination in soils, sediments, surface water, and groundwater released from Site M. At one time Site M was hydraulically connected to Dead Creek through an eight-foot opening at the southwest portion of the pit.
- f. "Site N," as depicted generally on the map attached hereto as Appendix A, consists of approximately four to five acres of land located along the eastern edge of Dead Creek CS-C, south of Judith Lane, and north of Cahokia Street in the Village of Cahokia, Illinois, and all the areal extent of contamination in soils, sediments, surface water, and groundwater released from Site N.
- g. "Dead Creek," which includes all the areal extent of contamination in soils, sediments, surface water, and groundwater released from Dead Creek, is depicted generally on the map attached hereto as Appendix A. Dead Creek consists of the creek and associated floodplain soils (as described in Section 3.5.2 of the Remedial Investigation for Sauget Area 1) stretching from the Alton & Southern Railroad at its northern end, flowing south through the Villages of Sauget and Cahokia for approximately 3.5 miles, including Borrow Pit Lake, and emptying into the Old Prairie du Pont Creek, which then flows approximately 2,000 feet west into a branch of the Mississippi River known as the Cahokia Chute.

Dead Creek has been divided into various segments by EPA for the purpose of investigation and response action.

- jj. “Sauget Area 1 Remediation Account” shall mean the special account with that name established by EPA within the Hazardous Substance Superfund pursuant to Paragraph 9.b. of the consent decree entered on December 15, 2009, between the United States and Settling Defendants in *United States v. Pharmacia Corp., et al.*, Civil Action No. 99-063 (S.D. Ill.).
- kk. “Sauget Area 1 Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and the consent decree entered in the District Court for the Southern District of Illinois on December 15, 2009, between the United States and Settling Defendants Pharmacia, Solutia, Cerro, and ExxonMobil, wherein the defendants agreed to pay \$4,350,000.00 in reimbursement of past response costs related to the Sauget Area 1 Site.
- ll. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.
- mm. “Settling Defendants” or “SDs” shall mean Solutia, Pharmacia, Cerro and ExxonMobil, and their successors and assigns.
- nn. “State” shall mean the State of Illinois.
- oo. “Statement of Work” or “SOW” shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Pre- and Post-Achievement O&M at the Site, as set forth in Appendix C to this Consent Decree and any modifications made in accordance with this Consent Decree.
- pp. “Supervising Contractors” shall mean the principal contractors retained by SDs to supervise and direct the implementation of the Work under this Consent Decree.
- qq. “Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.
- rr. “United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.
- ss. “Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

- tt. “Work” shall mean all activities and obligations SDs are required to perform under this Consent Decree, except the activities required under Section XX (Retention of Records).

V. GENERAL PROVISIONS

5. **Objectives of the Parties.** The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment by the design and implementation of response actions at the Site by SDs, to pay response costs of the United States, and to resolve the claims of the United States against SDs and Settling Non-Performing Owners as provided in this Consent Decree.

6. **Commitments by Settling Defendants.**

a. SDs shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth in this Consent Decree or developed by SDs and approved by EPA pursuant to this Consent Decree. SDs shall pay the United States for its response costs as provided in this Consent Decree.

b. The obligations of SDs to finance and perform the Work, including obligations to pay amounts due under this Consent Decree, are joint and several. In the event of the insolvency of any SD or the failure by any SD to implement any requirement of this Consent Decree, EPA shall be entitled and obligated to access such SD’s Financial Assurance under Section IX (“Financial Assurance”) and shall make such funds available to the remaining SDs to facilitate the completion of the Work as provided in ¶ 26 and the remaining SDs shall complete all such requirements.

7. **Compliance With Applicable Law.** Nothing in this Consent Decree limits SDs’ obligations to comply with the requirements of all applicable federal and state laws and regulations. SDs must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be deemed to be consistent with the NCP.

8. **Permits.**

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, SDs shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. SDs may seek relief under the provisions of Section XIII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in ¶ 8.a and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

9. Coordination and Supervision.

a. Project Coordinator.

(1) SDs' Project Coordinator must have sufficient technical expertise to coordinate the Work. SDs' Project Coordinator may not be an attorney representing any SD in this matter and may not act as the Supervising Contractor. SDs' Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(2) EPA shall designate and notify the SDs of its Project Coordinator and Alternate Project Coordinator. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) SDs' Project Coordinator shall meet with EPA's Project Coordinator at least monthly.

b. **Supervising Contractors.** SDs' proposed Supervising Contractors must have sufficient technical expertise to supervise the work and a quality assurance system that complies with ANSI/ASQC E4-2004, Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use (American National Standard). SDs may retain separate Supervising Contractors for Work involving capping and Work involving pulsed air biosparging.

c. **Procedures for Disapproval/Notice to Proceed.**

(1) SDs shall designate, and notify EPA, within 10 days after the Effective Date, of the name, contact information, and qualifications of the SDs' proposed Project Coordinator and Supervising Contractors.

(2) EPA, after a reasonable opportunity for review and comment by the State, shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractors, as applicable. If EPA issues a notice of disapproval, SDs shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. SDs may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of SDs' selection.

(3) SDs may change their Project Coordinator and/or Supervising Contractors, as applicable, by following the procedures of ¶¶ 9.c(1) and 9.c(2).

10. **Performance of Work in Accordance with SOW.** SDs shall: (a) develop the RD; (b) perform the RA; and (c) operate, maintain, and monitor the effectiveness of the RA; all in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the CD or SOW shall be subject to approval by EPA in accordance with ¶ 7.6 (Approval of Deliverables) of the SOW.

11. **Emergencies and Releases.** SDs shall comply with the emergency and release response and reporting requirements under ¶ 4.3 (Emergency Response and Reporting) of the SOW. Subject to Section XVI (Covenants by the United States), nothing in this CD, including ¶ 4.3 of the SOW, limits any authority of the United States: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site. If, due to SDs' failure to take appropriate response action under ¶ 4.3 of the SOW, EPA takes such action instead, SDs shall reimburse EPA under Section X (Payments for Response Costs) for all costs of the response action.

12. **Community Involvement.** If requested by EPA, SDs shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with, Section 2 (Community Involvement) of the SOW. Such activities may include, but are not limited to, designation of a Community Involvement Coordinator and implementation of a technical assistance plan. Costs incurred by the United States under this Section constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

13. Modification of SOW or Related Deliverables.

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, and such modification is consistent with the Scope of the Remedy set forth in ¶ 1.3 of the SOW, then EPA may notify SDs of such modification. If SDs object to the modification they may, within 30 days after EPA's notification, seek dispute resolution under Section XIV.

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if SDs invoke dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this CD, and SDs shall implement all work required by such modification. SDs shall incorporate the modification into the deliverable required under the SOW, as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this CD.

14. Nothing in this CD, the SOW, or any deliverable required under the SOW constitutes a warranty or representation of any kind by the United States that compliance with the work requirements set forth in the SOW or related deliverable will achieve the Performance Standards.

VII. REMEDY REVIEW

15. **Periodic Review.** SDs shall conduct, in accordance with ¶ 7.7(j) (Periodic Review Support Plan) of the SOW, studies and investigations to support EPA's reviews under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations, of whether the RA is protective of human health and the environment.

VIII. PROPERTY REQUIREMENTS

16. Agreements Regarding Access and Non-Interference.

a. SDs shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by SDs and by the United States, providing that such Non-Settling Owner, and Owner SD and Settling Non-Performing Owners shall, with respect to Owner SDs' and Settling Non-Performing Owners' Affected Property:

(1) Provide the United States and the other SDs, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the CD, including those listed in ¶ 16.b. (Access Requirements); and

(2) Refrain from using such Affected Property in any manner that EPA determines will: (i) pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or (ii) interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action. The restrictions include those listed in ¶ 16.c. (Land, Water, or Other Resource Use Restrictions).

b. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States;
- (3) Conducting investigations regarding contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;
- (7) Implementing the Work pursuant to the conditions set forth in ¶ 69 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by SDs or their agents, consistent with Section XIX (Access to Information);
- (9) Assessing SDs' compliance with the CD;
- (10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the CD; and
- (11) Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

c. **Land, Water, or Other Resource Use Restrictions.** The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

- (1) Prohibiting the following activities which could interfere with the RA: Digging in, through or otherwise disturbing caps and covers installed at the Site, provided that Cerro shall be able to conduct such work at Site I as is necessary to carry out its business operations and with prior written notice to and approval by EPA;
- (2) Prohibiting use of contaminated groundwater;
- (3) Prohibiting the following activities which could result in exposure to contaminants in subsurface soils and groundwater: Digging in, through or otherwise disturbing caps and covers installed at the Site;
- (4) Ensuring that any new structures on the Site will not be constructed in the following manner which could interfere with the RA: constructing a structure that covers or otherwise interferes with Work; and
- (5) Ensuring that any new structures on the Site will be constructed in a manner which will minimize potential risk of inhalation of contaminants.

d. Owner SDs and Settling Non-Performing Owners shall not Transfer its Affected Property without first securing EPA's approval of, and transferee's consent to, an agreement that: (i) is enforceable by SDs and the United States; and (ii) requires the transferee to provide access to and to refrain from using the Affected Property to the same extent as is provided under ¶ 16.a.

17. **Best Efforts.** As used in this Section, "best efforts" means the efforts that a reasonable person in the position of SDs, Owner SDs, and Settling Non-Performing Owners, as applicable, would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements. If SDs, Owner SDs, and Settling Non-Performing Owners, as applicable, are unable to accomplish what is required through "best efforts" in a timely manner, they shall notify the United States, and include a description of the steps taken to comply with the requirements. If the United States deems it appropriate, it may assist SDs, Owner SDs, or Settling Non-Performing Owners, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

18. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, SDs and Settling Non-Performing Owners shall continue to comply with their obligations under the CD, including their obligation to provide and/or secure access, to implement, maintain, monitor, and report on Institutional Controls, and to abide by such Institutional Controls.

19. If EPA determines in a decision document prepared in accordance with the NCP that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, SDs, Owner SDs, and Settling Non-Performing Owners shall cooperate with EPA's efforts to secure and ensure compliance with such Institutional Controls.

20. Notwithstanding any provision of the CD, the United States retains all of its access authorities and rights, as well as all of its rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

IX. FINANCIAL ASSURANCE

21. In order to ensure completion of the Work, SDs shall secure financial assurance, initially in the amount of \$13,059,000 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the "Financial Assurance" category on the Cleanup Enforcement Model Language and Sample Documents Database at <http://cfpub.epa.gov/compliance/models/>, and satisfactory to EPA. SDs may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, and/or trust funds.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency; or

c. A trust fund established for the benefit of EPA that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

22. SDs have selected, and EPA has found satisfactory, as initial financial assurance a letter of credit from Solutia, a surety bond from Cerro, and a letter of credit from ExxonMobil prepared in accordance with ¶ 21 and totaling the Estimated Cost of the Work above. Within

30 days after the Effective Date, or 30 days after EPA's approval of the form and substance of SDs' financial assurance, whichever is later, SDs shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the Regional Comptroller's Office, to the United States, and to EPA as specified in Section XXI (Notices and Submissions).

23. SDs shall diligently monitor the adequacy of the financial assurance. If any SD becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, such SD shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the affected SD of such determination. SDs shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the affected SD, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. SDs shall follow the procedures of ¶ 27 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. SDs' inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this CD, including, without limitation, the obligation of SDs to complete the Work in accordance with the terms of this CD.

24. Access to Financial Assurance by EPA.

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 69.b., then, in accordance with any applicable financial assurance mechanism, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 24.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the affected SD fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 24.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 69.b., EPA is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism, whether in cash or in kind, to continue and complete the Work, then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. SDs shall, within 30 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 24 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Sauget Area 1 Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

25. All EPA Work Takeover costs not paid under ¶ 24 must be reimbursed as Future Response Costs under Section X (Payments for Response Costs).

26. **Access to Financial Assurance by SDs.** In the event of the insolvency of any SD or the failure by any SD to implement any requirement of this Consent Decree in the absence of a Work Takeover, then, in accordance with any applicable financial assurance mechanism, EPA shall require that any funds guaranteed be paid and deposited into the Sauget Area 1 Remediation Account to be disbursed to the remaining PRPs in accordance with Section XI. At the same time, the remaining SDs shall increase the amount of their Financial Assurance under ¶ 21 in order to total the estimated cost of the Work remaining at that time.

27. **Modification of Amount, Form, or Terms of Financial Assurance.** SDs may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 22, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify SDs of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. SDs may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIV (Dispute Resolution). Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by SDs pursuant to the dispute resolution provisions of this CD or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, SDs shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 22.

28. **Release, Cancellation, or Discontinuation of Financial Assurance.** SDs may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a Certification of Work Completion under ¶ 4.7 (Certification of Work Completion) of the SOW; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance

of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIV (Dispute Resolution).

X. PAYMENTS FOR RESPONSE COSTS

29. Payment by SDs for United States' Past Response Costs.

a. Within 45 days after the Effective Date, SDs shall pay to EPA \$475,000 in payment for Past Response Costs. Payment shall be made in accordance with ¶ 31.a (instructions for past response cost payments).

b. **Deposit of Past Response Costs Payment.** The total amount to be paid by Setting Defendants pursuant to ¶ 29.a shall be deposited by EPA in the Sauget Area 1 Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

30. **Payments by SDs for Future Response Costs.** SDs shall pay to EPA all Future Response Costs not inconsistent with the NCP, excluding the first \$2,000,000 of Future Oversight Costs.

a. On a periodic basis, EPA will send SDs a bill requiring payment that includes an Itemized Cost Summary, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and DOJ and separately identifies the amount of Future Oversight Costs incurred. EPA will make reasonable efforts to send SDs this bill at least every 18 months. SDs shall make all payments within 45 days after SDs' receipt of each bill requiring payment, except as otherwise provided in ¶ 32, in accordance with ¶ 31.b (instructions for future response cost payments).

b. **Deposit of Future Response Costs Payments.** The total amount to be paid by SDs pursuant to ¶ 30.a. shall be deposited by EPA in the Sauget Area 1 Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Sauget Area 1 Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by SDs pursuant to the dispute resolution provisions of this CD or in any other forum.

31. Payment Instructions for SDs.

a. Past Response Costs Payments.

(1) The Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Southern District of Illinois shall provide SDs, in accordance with ¶ 91, with instructions regarding making payments to DOJ on behalf of EPA. The instructions must include a Consolidated Debt Collection System (“CDCS”) number to identify payments made under this CD.

(2) For all payments subject to this ¶ 31.a, SDs shall make such payment by Fedwire Electronic Funds Transfer (“EFT”) [or, alternatively, at <https://www.pay.gov>] to the DOJ account, in accordance with the instructions provided under ¶ 31.a(1), and including references to the CDCS Number, Site/Spill ID Number 054V, and DJ Number 90-11-2-06089/5.

(3) For each payment made under this ¶ 31.a, SDs shall send notices, including references to the CDCS, Site/Spill ID, and DJ numbers, to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 91.

b. Future Response Costs Payments and Stipulated Penalties.

(1) For all payments subject to this ¶ 31.b, SDs shall make such payment by Fedwire EFT, referencing the Site/Spill ID and DJ numbers. The Fedwire EFT payment must be sent as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read
“D 68010727 Environmental Protection Agency”

(2) For all payments made under this ¶ 31.b, SDs must include references to the Site/Spill ID and DJ numbers. At the time of any payment required to be made in accordance with ¶ 31.b, SDs shall send notices that payment has been made to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 91. All notices must include references to the Site/Spill ID and DJ numbers.

32. Contesting Future Response Costs. SDs may submit a Notice of Dispute, initiating the procedures of Section XIV (Dispute Resolution), regarding any Future Response Costs billed under ¶ 30 (Payments by SDs for Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA

action that was inconsistent with a specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing within 30 days after receipt of the bill and must be sent to the United States pursuant to Section XXI (Notices and Submissions). Such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If SDs submit a Notice of Dispute, SDs shall pay all uncontested Future Response Costs to the United States within 45 days after SDs' receipt of the bill requiring payment. Within 30 days after such payment, if informal dispute resolution has not resolved the dispute, SDs shall establish, in a duly chartered bank or trust company, an interest-bearing account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that account funds equivalent to the amount of the contested Future Response Costs. SDs shall send to the United States, as provided in Section XXI (Notices and Submissions), a copy of the transmittal letter and check or evidence of the Fedwire EFT paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the account, including, but not limited to, information containing the identity of the bank and bank account under which the account is established as well as a bank statement showing the initial balance of the account. If the United States prevails in the dispute, SDs shall pay the sums due (with accrued interest) to the United States within 7 days after the resolution of the dispute. If SDs prevail concerning any aspect of the contested costs, SDs shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States within 7 days after the resolution of the dispute. SDs shall be disbursed any balance of the account. All payments to the United States under this Paragraph shall be made in accordance with ¶ 31.b (instructions for future response cost payments). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding SDs' obligation to reimburse the United States for its Future Response Costs.

33. **Interest.** In the event that any payment for Past Response Costs or for Future Response Costs required under this Section is not made by the date required, SDs shall pay Interest on the unpaid balance. The Interest on Past Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of SDs' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of SDs' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to ¶ 56 (Stipulated Penalty Amounts – Work).

XI. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS

34. **Creation of Sauget Area 1 Remediation Account and Agreement to Disburse Funds to SDs.** EPA established the Sauget Area 1 Remediation Account pursuant to Paragraph 9.b. of the consent decree entered on December 15, 2009, between the United States and Defendants in *United States v. Pharmacia Corp., et al.*, Civil Action No. 99-063 (S.D. Ill.). Subject to the terms and conditions set forth in this Section, EPA agrees to make the funds in the Sauget Area 1 Remediation Account, including Interest Earned on the funds in the Sauget Area 1 Remediation Account, available for disbursement to SDs as partial reimbursement for

performance of the Work. EPA shall disburse funds from the Sauget Area 1 Remediation Account to SDs in accordance with the procedures and milestones for phased disbursement set forth in this Section.

35. Timing, Amount, and Method of Disbursing Funds From the Sauget Area 1 Remediation Account. Within 45 days after EPA's receipt of a Cost Summary and Certification, as defined by ¶ 36.b, or if EPA has requested additional information under ¶ 36.b or a revised Cost Summary and Certification under ¶ 36.c, within 45 days after receipt of the additional information or revised Cost Summary and Certification, and subject to the conditions set forth in this Section, EPA shall disburse the funds from the Sauget Area 1 Remediation Account at the completion of the following milestones, and in the amounts set forth below:

Milestone	Disbursement of Funds
EPA approval of RD Work Plan	25% of funds from the Sauget Area 1 Remediation Account
EPA issuance of Notice of Authorization to Proceed with RA	50% of remaining funds from the Sauget Area 1 Remediation Account
EPA Notice of RA Construction Completion	Remainder of funds in the Sauget Area 1 Remediation Account

EPA shall disburse the funds from the Sauget Area 1 Remediation Account to SDs pursuant to instructions provided by SDs in the Cost Summary and Certification.

36. Requests for Disbursement of Special Account Funds.

a. Within 60 days after issuance of EPA's written confirmation that a milestone of the Work, as defined in ¶ 35 (Timing, Amount, and Method of Disbursing Funds), has been satisfactorily completed, SDs shall submit to EPA a Cost Summary and Certification, as defined in ¶ 36.b, covering the Work performed up to the date of completion of that milestone. SDs shall not include in any submission costs included in a previous Cost Summary and Certification following completion of an earlier milestone of the Work if those costs have been previously sought or reimbursed pursuant to ¶ 35.

b. Each Cost Summary and Certification shall include a complete and accurate written cost summary and certification of the necessary costs incurred and paid by SDs for the Work covered by the particular submission, excluding costs not eligible for disbursement under ¶ 37 (Costs Excluded from Disbursement). Each Cost Summary and Certification shall contain the following statement signed by the Chief Financial Officer of a SD:

To the best of my knowledge, after thorough investigation and review of SDs' documentation of costs incurred and paid for Work performed pursuant to this CD [insert, as appropriate: "up to the date of completion of milestone 1," "between the date of completion of milestone 1 and the date of completion of milestone 2," or "between the date of completion of milestone 2 and the date of completion of the milestone 3,"] I certify that the information contained in or accompanying this submission is true,

accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment.

The Chief Financial Officer of a SD shall also provide EPA a list of the documents that he or she reviewed in support of the Cost Summary and Certification. Upon request by EPA, SDs shall submit to EPA any additional information that EPA deems necessary for its review and approval of a Cost Summary and Certification.

c. If EPA finds that a Cost Summary and Certification includes a mathematical error, costs excluded under ¶ 37 (Costs Excluded from Disbursement), costs that are inadequately documented, or costs submitted in a prior Cost Summary and Certification, it will notify SDs and provide them an opportunity to cure the deficiency by submitting a revised Cost Summary and Certification. If SDs fail to cure the deficiency within 30 days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate SDs' costs eligible for disbursement for that submission and disburse the corrected amount to SDs in accordance with the procedures in ¶ 35 (Timing, Amount, and Method of Disbursing Funds from Sauget Area 1 Remediation Account). SDs may dispute EPA's recalculation under this Paragraph pursuant to Section XIV (Dispute Resolution). In no event shall SDs be disbursed funds from the Sauget Area 1 Remediation Account in excess of amounts properly documented in a Cost Summary and Certification accepted or modified by EPA.

37. Costs Excluded from Disbursement. The following costs are excluded from, and shall not be sought by SDs for, disbursement from the Sauget Area 1 Remediation Account: (a) response costs paid pursuant to Section X (Payments for Response Costs); (b) any other payments made by SDs to the United States pursuant to this CD, including, but not limited to, any Interest or stipulated penalties paid pursuant to Section X (Payments for Response Costs) or XV (Stipulated Penalties); (c) attorneys' fees and costs, except for reasonable attorneys' fees and costs necessarily related to any Work under the SOW for which legal services are essential, such as obtaining access or institutional controls as required by Section VIII (Property Requirements); (d) costs of any response activities SDs perform that are not required under, or approved by EPA pursuant to, this CD; (e) costs related to SDs' litigation, settlement, development of potential contribution claims, or identification of defendants; (f) internal costs of SDs, including but not limited to, salaries, travel, or in-kind services, except for those costs that represent the work of employees of SDs directly performing the Work; (g) any costs incurred by SDs prior to the Effective Date; or (h) any costs incurred by SDs pursuant to Section XIV (Dispute Resolution).

38. **Termination of Disbursements from the Remediation Account.** EPA's obligation to disburse funds from the Sauget Area 1 Remediation Account under this CD shall terminate upon EPA's determination that SDs: (a) have knowingly submitted a materially false or misleading Cost Summary and Certification; (b) have submitted a materially inaccurate or incomplete Cost Summary and Certification, and have failed to correct the materially inaccurate or incomplete Cost Summary and Certification within 21 days after being notified of, and given the opportunity to cure, the deficiency; or (c) failed to submit a Cost Summary and Certification as required by ¶ 36 (Requests for Disbursement of Special Account Funds) within 60 days (or such longer period as EPA agrees) after being notified that EPA intends to terminate its obligation to make disbursements pursuant to this Section because of SDs' failure to submit the Cost Summary and Certification as required by ¶ 36. EPA's obligation to disburse funds from the Sauget Area 1 Remediation Account shall also terminate upon EPA's assumption of performance of any portion of the Work pursuant to ¶ 69 (Work Takeover), when such assumption of performance of the Work is not challenged by SDs or, if challenged, is upheld under Section XIV (Dispute Resolution). SDs may dispute EPA's termination of special account disbursements under Section XIV.

39. **Recapture of Remediation Account Disbursements.** Upon termination of disbursements from the Sauget Area 1 Remediation Account under ¶ 38 (Termination of Disbursements from the Remediation Account), if EPA has previously disbursed funds from the Sauget Area 1 Remediation Account for activities specifically related to the reason for termination, e.g., discovery of a materially false or misleading submission after disbursement of funds based on that submission, EPA shall submit a bill to SDs for those amounts already disbursed from the Sauget Area 1 Remediation Account specifically related to the reason for termination, plus Interest on that amount covering the period from the date of disbursement of the funds by EPA to the date of repayment of the funds by SDs. Within 45 days after receipt of EPA's bill, SDs shall reimburse the EPA Hazardous Substance Superfund for the total amount billed. Payment shall be made in accordance with ¶ 31.b (instructions for future response cost payments). Upon receipt of payment, EPA may deposit all or any portion thereof in the Sauget Area 1 Special Account, the Sauget Area 1 Remediation Account, or the EPA Hazardous Substance Superfund. The determination of where to deposit or how to use the funds shall not be subject to challenge by SDs pursuant to the dispute resolution provisions of this CD or in any other forum. SDs may dispute EPA's determination as to recapture of funds pursuant to Section XIV (Dispute Resolution).

40. **Balance of Special Account Funds.** After EPA issues its Notice of RA Construction Completion pursuant to paragraph 4.5(f) of the SOW, and after EPA completes all disbursement to SDs in accordance with this Section, if any funds remain in the Sauget Area 1 Remediation Account, EPA may transfer such funds to the Sauget Area 1 Special Account or to the EPA Hazardous Substance Superfund. Any transfer of funds to the Sauget Area 1 Special Account or the EPA Hazardous Substance Superfund shall not be subject to challenge by SDs pursuant to the dispute resolution provisions of this CD or in any other forum. Any amounts received for the Sauget Area 1 Remediation Account from any distributions by the liquidation of the Home Insurance Company after notice of RA Construction Completion and not in excess of

amounts properly documented in a Cost Summary and Certification accepted or modified by EPA shall be placed in the Sauget Area 1 Remediation Account and disbursed to the SDs pursuant to instructions provided by the SDs, unless EPA has assumed performance of any portion of the Work pursuant to ¶ 69 (Work Takeover), in which case such distribution shall be placed in the Area 1 Special Account.

XII. INDEMNIFICATION AND INSURANCE

41. SDs' Indemnification of the United States.

a. The United States does not assume any liability by entering into this CD or by virtue of any designation of SDs as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). SDs shall indemnify, save, and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of SDs, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on SDs' behalf or under their control, in carrying out activities pursuant to this CD, including, but not limited to, any claims arising from any designation of SDs as EPA's authorized representatives under Section 104(e) of CERCLA. Further, SDs agree to pay the United States all costs it incurs including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of SDs, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this CD. The United States shall not be held out as a party to any contract entered into by or on behalf of SDs in carrying out activities pursuant to this CD. Neither SDs nor any such contractor shall be considered an agent of the United States.

b. The United States shall give SDs notice of any claim for which the United States plans to seek indemnification pursuant to this ¶ 41, and shall consult with SDs prior to settling such claim.

42. SDs covenant not to sue and agree not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of SDs and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, SDs shall indemnify, save and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of SDs and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

43. **Insurance.** No later than 15 days before commencing any on-site Work, SDs shall secure, and shall maintain until the first anniversary after issuance of EPA's Certification of

RA Completion pursuant to ¶ 4.6 (Certification of RA Completion) of the SOW commercial general liability insurance with limits of \$1 million, for any one occurrence, and automobile liability insurance with limits of \$1 million, combined single limit, together with an umbrella policy with limits of \$2 million, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of SDs pursuant to this CD. In addition, for the duration of this CD, SDs shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of SDs in furtherance of this CD. Prior to commencement of the Work, SDs shall provide to EPA certificates of such insurance and a copy of each insurance policy. SDs shall resubmit such certificates each year on the anniversary of the Effective Date, but need only submit copies of coverage changes to each insurance policy. If SDs demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, SDs need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XIII. FORCE MAJEURE

44. "Force majeure," for purposes of this CD, is defined as any event arising from causes beyond the control of SDs, of any entity controlled by SDs, or of SDs' contractors that delays or prevents the performance of any obligation under this CD despite SDs' best efforts to fulfill the obligation. The requirement that SDs exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

45. If any event occurs or has occurred that may delay the performance of any obligation under this CD for which SDs intend or may intend to assert a claim of force majeure, SDs shall notify EPA's Project Coordinator orally or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within 48 hours of when SDs first knew that the event might cause a delay. Within ten (10) days thereafter, SDs shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; SDs' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of SDs, such event may cause or contribute to an endangerment to public health or welfare, or the environment. SDs shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. SDs shall be deemed to know of any circumstance of which SDs, any entity controlled by SDs, or SDs' contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude SDs from asserting any claim of force majeure regarding that

event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 44 and whether SDs have exercised their best efforts under ¶ 44, EPA may, in its unreviewable discretion, excuse in writing SDs' failure to submit timely or complete notices under this Paragraph.

46. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this CD that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify SDs in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify SDs in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

47. If SDs elect to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution) regarding EPA's decision, they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, SDs shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that SDs complied with the requirements of ¶¶ 44 and 45. If SDs carry this burden, the delay at issue shall be deemed not to be a violation by SDs of the affected obligation of this CD identified to EPA and the Court.

48. The failure by EPA to timely complete any obligation under the CD or under the SOW is not a violation of the CD, provided, however, that if such failure prevents SDs from meeting one or more deadlines in the SOW, SDs may seek relief under this Section.

XIV. DISPUTE RESOLUTION

49. Unless otherwise expressly provided for in this CD, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this CD. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of SDs that have not been disputed in accordance with this Section.

50. A dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. Any dispute regarding this CD shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute.

51. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be

considered binding unless, within 30 days after the conclusion of the informal negotiation period, SDs invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by SDs. The Statement of Position shall specify SDs' position as to whether formal dispute resolution should proceed under ¶ 52 (Record Review) or ¶ 53.

b. Within 30 days after receipt of SDs' Statement of Position, EPA will serve on SDs its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under ¶ 52 (Record Review) or ¶ 53. Within 30 days after receipt of EPA's Statement of Position, SDs may submit a Reply.

c. If there is disagreement between EPA and SDs as to whether dispute resolution should proceed under ¶ 52 (Record Review) or ¶ 53, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if SDs ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in ¶¶ 52 and 53.

52. **Record Review.** Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this CD, and the adequacy of the performance of response actions taken pursuant to this CD. Nothing in this CD shall be construed to allow any dispute by SDs regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in ¶ 52.a. This decision shall be binding upon SDs, subject only to the right to seek judicial review pursuant to ¶¶ 52.c and 52.d.

c. Any administrative decision made by EPA pursuant to ¶ 52.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by SDs with the Court and served on all Parties within 20 days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be

resolved to ensure orderly implementation of this CD. The United States may file a response to SDs' motion.

d. In proceedings on any dispute governed by this Paragraph, SDs shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to ¶ 52.a.

53. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. The Director of the Superfund Division, EPA Region 5, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under ¶ 51. The Superfund Division Director's decision shall be binding on SDs unless, within 20 days after receipt of the decision, SDs file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the CD. The United States may file a response to SDs' motion.

b. Notwithstanding ¶ CC (CERCLA § 113(j) record review of ROD and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

54. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of SDs under this CD, except as provided in ¶ 32 (Contesting Future Response Costs), as agreed by EPA, or as determined by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in ¶ 59. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this CD. In the event that SDs do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XV (Stipulated Penalties).

XV. STIPULATED PENALTIES

55. SDs shall be liable for stipulated penalties in the amounts set forth in ¶¶ 56 and 57 to the United States for failure to comply with the requirements of this CD specified below, unless excused under Section XIII (Force Majeure). "Compliance" by SDs shall include completion of all activities and obligations, including payments, required under this CD, or any deliverable approved under this CD, in accordance with all applicable requirements of law, this CD, the SOW, and any deliverables approved under this CD and within the specified time schedules established by and approved under this CD.

56. Stipulated Penalty Amounts - Work (Including Payments and Excluding Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in ¶ 56.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$500
15th through 30th day	\$1,500
31st day and beyond	\$2,000

b. **Compliance Milestones.**

(1) Failure to timely initiate Remedial Action Construction or to complete the Remedial Action;

(2) Failure to timely implement the Operation and Maintenance Plan;

(3) Failure to conduct performance monitoring as required by either the O&M Plan or the Periodic Review Support Plan;

(4) Failure to timely implement the Institutional Control Implementation and Assurance Plan;

(5) Failure to establish or maintain the required insurance pursuant to Section XII of this Consent Decree;

(6) Failure to make best efforts to obtain or to provide access or to execute the required Institutional Controls and submit them to EPA pursuant to Section VIII of this Consent Decree;

(7) Failure to establish and maintain financial assurance in compliance with the timelines and other substantive and procedural requirements of Section IX (Financial Assurance);

(8) Failure to timely make payment of Response Costs pursuant to Section X of this Consent Decree; or

(9) Failure to initiate or complete any further response actions EPA selects for the Site pursuant to this Consent Decree.

57. Stipulated Penalty Amounts - Deliverables.

a. **Material Defects.** If an initially submitted or resubmitted deliverable contains a material defect, and the deliverable is disapproved or modified by EPA under ¶ 7.6(a) (Initial Submissions) or ¶ 7.6(b) (Resubmissions) of the SOW due to such material defect, then the material defect shall constitute a lack of compliance for purposes of ¶ 55. The provisions of Section XIV (Dispute Resolution) and Section XV (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding SDs' submissions under this CD.

b. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to the CD:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	\$500
15th through 30th day	\$1,250
31st day and beyond	\$2,500

58. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 69 (Work Takeover), SDs shall be liable for a stipulated penalty in the amount of \$1 million. Stipulated penalties under this Paragraph are in addition to the remedies available under ¶¶ 24 (Access to Financial Assurance by EPA) and 69 (Work Takeover).

59. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under ¶ 7.6 (Approval of Deliverables) of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies SDs of any deficiency; (b) with respect to a decision by the Director of the Superfund Division, EPA Region 5, under ¶ 52.b or ¶ 53.a of Section XIV (Dispute Resolution), during the period, if any, beginning on the 31st day after the date that SDs' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XIV (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this CD shall prevent the simultaneous accrual of separate penalties for separate violations of this CD.

60. Following EPA's determination that SDs have failed to comply with a requirement of this CD, EPA may give SDs written notification of the same and describe the noncompliance. EPA may send SDs a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified SDs of a violation.

61. All penalties accruing under this Section shall be due and payable to the United States within 30 days after SDs' receipt from EPA of a demand for payment of the penalties, unless SDs invoke the Dispute Resolution procedures under Section XIV (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that

the payment is for stipulated penalties and shall be made in accordance with ¶ 31.b (instructions for future response cost payments).

62. Penalties shall continue to accrue as provided in ¶ 59 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA within 30 days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, SDs shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days after receipt of the Court's decision or order, except as provided in ¶ 62.c;

c. If the District Court's decision is appealed by any Party, SDs shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the balance of the account shall be paid to EPA or to SDs to the extent that they prevail.

63. If SDs fail to pay stipulated penalties when due, SDs shall pay Interest on the unpaid stipulated penalties as follows: (a) if SDs have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 62 until the date of payment; and (b) if SDs fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 61 until the date of payment. If SDs fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

64. The payment of penalties and Interest, if any, shall not alter in any way SDs' obligation to complete the performance of the Work required under this CD.

65. Nothing in this CD shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of SDs' violation of this CD or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided in this CD, except in the case of a willful violation of this CD.

66. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CD.

XVI. COVENANTS BY THE UNITED STATES

67. Covenants for SDs and Settling Non-Performing Owners by United States.

Except as provided in ¶ 68 (General Reservations of Rights), the United States covenants not to sue or to take administrative action against SDs and Settling Non-Performing Owners pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA, 42 U.S.C. § 6973, for the Work, Past Response Costs, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by SDs and Settling Non-Performing Owners of their obligations under this CD. These covenants extend only to SDs and Settling Non-Performing Owners and do not extend to any other person.

68. General Reservations of Rights. The United States reserves, and this CD is without prejudice to, all rights against SDs and Settling Non-Performing Owners with respect to all matters not expressly included within the United States' covenants. Notwithstanding any other provision of this CD, the United States reserves all rights against SDs and Settling Non-Performing Owners with respect to:

- a. liability for failure by SDs and Settling Non-Performing Owners to meet a requirement of this CD;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based on the ownership of the Site by SDs and Settling Non-Performing Owners when such ownership commences after signature of this CD by SDs and Settling Non-Performing Owners;
- d. liability based on the operation of the Site by SDs and Settling Non-Performing Owners when such operation commences after signature of this CD by SDs or Settling Non-Performing Owners and does not arise solely from SDs' or Settling Non-Performing Owners' performance of the Work;
- e. liability based on SDs' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this CD by SDs;
- f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- g. criminal liability;
- h. liability for violations of federal or state law that occur during or after implementation of the Work;

- i. liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, but that cannot be required pursuant to ¶ 13 (Modification of SOW or Related Deliverables);
- j. liability for additional operable units at the Site or the final response action; and
- k. liability for costs that the United States will incur regarding the Site but that are not within the definition of Future Response Costs.

69. Work Takeover.

a. In the event EPA determines that SDs: (1) have ceased implementation of any portion of the Work; (2) are seriously or repeatedly deficient or late in their performance of the Work; or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice (“Work Takeover Notice”) to SDs. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide SDs a period of 10 days within which to remedy the circumstances giving rise to EPA’s issuance of such notice.

b. If, after expiration of the 10-day notice period specified in ¶ 69.a, SDs have not remedied to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will notify SDs in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 69.b. Funding of Work Takeover costs is addressed under ¶ 24 (Access to Financial Assurance by EPA).

c. SDs may invoke the procedures set forth in ¶ 52 (Record Review), to dispute EPA’s implementation of a Work Takeover under ¶ 69.b. However, notwithstanding SDs’ invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 69.b until the earlier of (1) the date that SDs remedy, to EPA’s satisfaction, the circumstances giving rise to EPA’s issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with ¶ 52 (Record Review) requiring EPA to terminate such Work Takeover.

70. Notwithstanding any other provision of this CD, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XVII. COVENANTS BY SETTLING DEFENDANTS

71. **Covenants by SDs and Settling Non-Performing Owners.** Subject to the reservations in ¶ 73, SDs and Settling Non-Performing Owners covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Work, past

response actions regarding the Site, Past Response Costs, Future Response Costs, and this CD, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112 or 113, or any other provision of law;

b. any claims under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Work, past response actions regarding the Site, Past Response Costs, Future Response Costs, and this CD; or

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Illinois Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

d. any direct or indirect claim for disbursement from the Sauget Area 1 Special Account or Sauget Area 1 Remediation Account, except as provided in Section XI (Disbursement of Special Account Funds).

72. Except as provided in ¶¶ 75 (Waiver of Claims by SDs and Settling Non-Performing Owners) and 82 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States brings a cause of action or issues an order pursuant to any of the reservations in Section XVI (Covenants by the United States), other than in ¶¶ 68.a (claims for failure to meet a requirement of the CD), 68.g (criminal liability), and 68.h (violations of federal/state law during or after implementation of the Work), but only to the extent that SDs' or Settling Non-Performing Owners' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

73. SDs and Settling Non-Performing Owners reserve, and this CD is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of SDs' or Settling Non-Performing Owners' deliverables or activities.

74. Nothing in this CD shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

75. **Waiver of Claims by SDs and Settling Non-Performing Owners.**

a. SDs and Settling Non-Performing Owners agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) ***De Micromis* Waiver.** For all matters relating to the Site against any person where the person's liability to SDs and Settling Non-Performing Owners with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials; and

(2) **Municipal Solid Waste ("MSW") Waiver.** For all matters relating to the Site against any person where the person's liability to SDs and Settling Non-Performing Owners with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of MSW at the Site, if the volume of MSW disposed, treated, or transported by such person to the Site did not exceed 0.2% of the total volume of waste at the Site.

b. **Exceptions to Waiver.**

(1) The waiver under this ¶ 75 shall not apply with respect to any defense, claim, or cause of action that a SD or Settling Non-Performing Owner may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the Site against such SD or Settling Non-Performing Owner.

(2) The waiver under ¶ 75.a.(1) (*De Micromis* Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

(3) The waiver under ¶ 75.a.(2) (MSW Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA

determines that: (i) the materials containing MSW contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.

(4) The waivers under this ¶ 75 shall not apply with respect to any claim or cause of action of SDs against the insurers for Sauget & Company, Paul Sauget, and the Village of Sauget, or against Rogers Cartage Company and its insurers.

76. SDs agree not to seek judicial review of any final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

XVIII. EFFECT OF SETTLEMENT; CONTRIBUTION

77. Except as provided in ¶ 75 (Waiver of Claims by SDs and Settling Non-Performing Owners), nothing in this CD shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this CD. Except as provided in Section XVII (Covenants by SDs and Settling Non-Performing Owners), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this CD diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

78. The Parties agree, and by entering this CD this Court finds, that this CD constitutes a judicially-approved settlement pursuant to which each SD and Settling Non-Performing Owner has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this CD. The “matters addressed” in this CD are the Work, Past Response Costs, and Future Response Costs.

79. The Parties further agree, and by entering this CD this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this CD constitutes a judicially-approved settlement pursuant to which each SD and Settling Non-Performing Owner has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

80. Each SD and Settling Non-Performing Owner shall, with respect to any suit or claim brought by it for matters related to this CD, notify the United States in writing no later than 60 days prior to the initiation of such suit or claim. The United States is aware that Solutia and Pharmacia have been involved in litigation with the insurers for Sauget & Company, Paul Sauget, and the Village of Sauget, and with Rogers Cartage Company and its insurers and the notice requirements in this Paragraph and ¶ 81 do not apply to those suits.

81. Each SD and Settling Non-Performing Owner shall, with respect to any suit or claim brought against it for matters related to this CD, notify in writing the United States within 10 days after service of the complaint on such SD or Settling Non-Performing Owner. In addition, each SD or Settling Non-Performing Owner shall notify the United States within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

82. **Res Judicata and Other Defenses.** In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, SDs and Settling Non-Performing Owners shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XVI (Covenants by the United States).

XIX. ACCESS TO INFORMATION

83. SDs shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within SDs' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this CD, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. SDs shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

84. Privileged and Protected Claims.

a. SDs may assert that all or part of a Record requested by the United States is privileged or protected as provided under federal law, in lieu of providing the Record, provided SDs comply with ¶ 84.b, and except as provided in ¶ 84.c.

b. If SDs assert a claim of privilege or protection, they shall provide the United States with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a

claim of privilege or protection applies only to a portion of a Record, SDs shall provide the Record to the United States in redacted form to mask the privileged or protected portion only. SDs shall retain all Records that they claim to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the SDs' favor.

c. SDs may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that SDs are required to create or generate pursuant to this CD.

85. **Business Confidential Claims.** SDs may assert that all or part of a Record provided to the United States under this Section or Section XX (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). SDs shall segregate and clearly identify all Records or parts thereof submitted under this CD for which SDs assert business confidentiality claims. Records submitted to EPA determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified SDs that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to SDs.

86. If relevant to the proceeding, the Parties agree that validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this CD.

87. Notwithstanding any provision of this CD, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XX. RETENTION OF RECORDS

88. Until 10 years after EPA's Certification of Work Completion under ¶ 4.7 (Certification of Work Completion) of the SOW, each SD shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that SDs who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each SD must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each SD (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

89. At the conclusion of this record retention period, SDs shall notify the United States at least 90 days prior to the destruction of any such Records, and, upon request by the United States, and except as provided in ¶ 84 (Privileged and Protected Claims), SDs shall deliver any such Records to EPA.

90. Each SD certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XXI. NOTICES AND SUBMISSIONS

91. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this CD must be in writing unless otherwise specified. Whenever, under this CD, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the person(s) specified below at the address(es) specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Notices required to be sent to EPA, and not to the United States, should not be sent to the DOJ. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the CD regarding such Party.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-06089/5

As to EPA:

Douglas Ballotti
Acting Director, Superfund Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

and:

Michael Berkoff
EPA Project Manager
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd. (SR-6J)
Chicago, IL 60604-3590
berkoff.michael@epa.gov

As to the Regional Comptroller's
Office:

Richard Hackley
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd. (MF-10J)
Chicago, Illinois 60604-3590
hackley.richard@epa.gov

As to EPA Cincinnati Finance
Center:

EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268
cinwd_acctsreceivable@epa.gov

As to SDs:

Steven D. Smith
Settling Defendants' Project Coordinator
c/o Solutia Inc.
575 Maryville Centre Drive
St. Louis, MO 63141

As to SDs Pharmacia and Solutia: Cathleen S. Bumb
Director, Remediation and Senior Environmental
Counsel
Solutia Inc.
575 Maryville Centre Drive
St. Louis, MO 63141

and: Jason A. Flower
Counsel for Solutia Inc. and Pharmacia LLC
Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105

As to SD ExxonMobil: Kevin J. Vaughan
Exxon Mobil Corporation
22777 Springwoods Village Pkwy., E2.3B.508
Spring, TX 77389
kevin.j.vaughan@exxonmobil.com

and: Steven P. Schmidt
ExxonMobil Environmental Services Company
22777 Springwoods Village Pkwy., S2.2B.282
Spring, TX 77389
steven.p.schmidt@exxonmobil.com

As to SD Cerro: Mr. Greg Heidt
Cerro Flow Products LLC
P.O. Box 66800
St. Louis, MO 63166-6800
(618) 978-9383
gheidt@cerroflow.com

and: Corey Grauer, Esq.
Marmon Engineered Components Company
181 W. Madison St.
Chicago, IL 60602
(312) 845-5370
Corey.Grauer@marmon.com

As to Settling Non-Performing
Owner
Ruan Transport Corp:

William Walton, Esq.
Law Department
Ruan Transport Corp.
3200 Ruan Center
666 Grand Avenue
Des Moines, Iowa 50309

and:

Dale Hermeling, Esq.
Counsel for Ruan Transport Corp.
Jenkins & Kling, P.C.
150 North Meramec Avenue, Suite 400
St. Louis, MO 63105
dhermeling@jenkinskling.com

As to Settling Non-Performing
Owner
Estate of Harold W. Wiese:

Harold E. Wiese, Executor of the Estate of
Harrold W. Wiese (Deceased)

Non-Responsive

and:

Walter L. Whittenberg, Esq.
Counsel for the Estate of Harold W. Wiese
Greensfelder, Hemker & Gale, P.C.
10 South Broadway, Suite 2000
St. Louis, MO 63102

As to Settling Non-Performing
Owner
Wiese USA:

Harold E. Wiese, President
Wiese USA, Inc.

Non-Responsive

St. Louis, MO 63132

and:

Walter L. Whittenberg, Esq.
Counsel for Wiese USA, Inc.
Greensfelder, Hemker & Gale, P.C.
10 South Broadway, Suite 2000
St. Louis, MO 63102

As to Settling Non-Performing
Owner
Estate of Doris M. Tolbird:

Tammy M. Read, Trustee
Doris M. Tolbird Revocable Living Trust #1

Non-Responsive

Columbia, IL 62236

XXII. RETENTION OF JURISDICTION

92. This Court retains jurisdiction over both the subject matter of this CD and SDs and Settling Non-Performing Owners for the duration of the performance of the terms and provisions of this CD for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this CD, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIV (Dispute Resolution).

XXIII. APPENDICES

93. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the description and/or map of the Site.

“Appendix B” is the ROD.

“Appendix C” is the SOW.

“Appendix D” is the financial assurance.

XXIV. MODIFICATION

94. Except as provided in ¶ 13 (Modification of SOW or Related Deliverables), material modifications to this CD, including the SOW, shall be in writing, signed by the United States and SDs, and shall be effective upon approval by the Court. Except as provided in ¶ 13, non-material modifications to this CD, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and SDs. A modification to the SOW shall be considered material if it implements a ROD amendment that fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

95. Nothing in this CD shall be deemed to alter the Court’s power to enforce, supervise, or approve modifications to this CD.

XXV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

96. This CD shall be lodged with the Court for at least 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the CD disclose facts or considerations that indicate that the CD is

inappropriate, improper, or inadequate. SDs consent to the entry of this CD without further notice.

97. If for any reason the Court should decline to approve this CD in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXVI. SIGNATORIES/SERVICE

98. Each undersigned representative of a SD and Settling Non-Performing Owner to this CD and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this CD and to execute and legally bind such Party to this document.

99. Each SD and Settling Non-Performing Owner agrees not to oppose entry of this CD by this Court or to challenge any provision of this CD unless the United States has notified SDs in writing that it no longer supports entry of the CD.

100. Each SD and Settling Non-Performing Owner shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this CD. SDs and Settling Non-Performing Owners agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. SDs and Settling Non-Performing Owners need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this CD.

XXVII. FINAL JUDGMENT

101. This CD and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the CD. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this CD.

102. Upon entry of this CD by the Court, this CD shall constitute a final judgment between and among the United States, SDs, and Settling Non-Performing Owners. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 7th DAY OF April, 2017.


Handwritten signature of Nancy J. Rosenstengel in black ink. The signature is cursive and includes a circular official seal of the United States District Court for the District of Columbia, which is partially obscured by the ink.

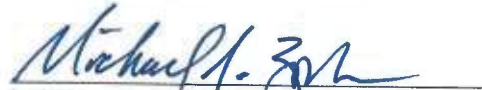
United States District Judge


Signature Page for Consent Decree regarding the Sauget Area 1 Superfund Site


FOR THE UNITED STATES OF AMERICA:

February 14, 2017
Date


BRUCE S. GELBER
Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530


MICHAEL J. ZOELLER
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611


DONALD S. BOYCE
United States Attorney
Southern District of Illinois
9 Executive Dr.
Fairview Heights, IL 62208


NATHAN D. STUMP
Assistant United States Attorney
Southern District of Illinois
9 Executive Dr.
Fairview Heights, IL 62208
nathan.stump@usdoj.gov

Signature Page for Consent Decree regarding the Sauget Area 1 Superfund Site



ROBERT A. KAPLAN
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604



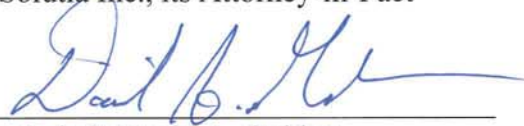
THOMAS J. MARTIN
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Signature Page for Consent Decree regarding the Sauget Area 1 Superfund Site

FOR PHARMACIA LLC

By: Solutia Inc., its Attorney-in-Fact

1/18/2017
Date



Name (print): David A. Golden

Title: Director

Address: Solutia Inc.
c/o Eastman Chemical Company
200 S. Wilcox Dr.
Kingsport, TN 37660

Agent Authorized to Accept Service
on Behalf of Above-signed Party:

Name (print): Edwin Williamson

Title: Vice President

Address: Solutia Inc.
c/o Eastman Chemical Company
200 Wilcox Dr.
Kingsport, TN 37660

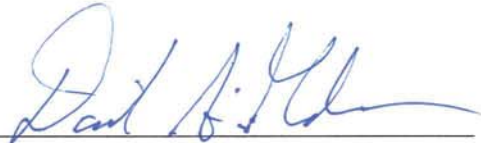
Phone: 423-229-2000

email: ewilliamson@eastman.com

Signature Page for Consent Decree regarding the Sauget Area 1 Superfund Site

FOR SOLUTIA INC.

1/18/2017
Date


Name (print): David A. Golden
Title: Director
Address: Solutia Inc.
c/o Eastman Chemical Company
200 S. Wilcox Dr.
Kingsport, TN 37660

Agent Authorized to Accept Service
on Behalf of Above-signed Party:

Name (print): Edwin Williamson
Title: Vice President
Address: Solutia Inc.
c/o Eastman Chemical Company
200 Wilcox Dr.
Kingsport, TN 37660
Phone: 423-229-2000
email: ewilliamson@eastman.com

Signature Page for Consent Decree regarding the Sauget Area 1 Superfund Site

FOR CERRO FLOW PRODUCTS LLC

12/8/2016
Date

Agent Authorized to Accept Service
on Behalf of Above-signed Party:

M. H. Heit
Name (print): GREG HEIT
Title: VP, Finance
Address: 3000 Mississippi Ave.
Chicago, IL 60604
SAUGET,
Phone:
email:

Corey Grauer Esq.
Marmion Engineered Components Company
181 W. Madison St.
26th Floor
Chicago, IL 60602
312.845.5370
corey.grauer@marmion.com

Signature Page for Consent Decree regarding the Sauget Area 1 Superfund Site

FOR EXXONMOBIL OIL CORPORATION

01-25-17

Date

LM. Rocioppi
Name (print): Len M. Rocioppi
Title: Attorney in Fact
Address: Spring, Texas

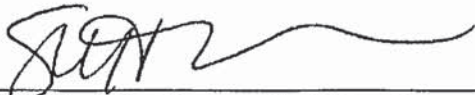
Agent Authorized to Accept Service
on Behalf of Above-signed Party:

Name (print): Kevin J. Vaughan
Title: Counsel
Address: 22777 Springcreek Village Pkwy., Spring, TX
Phone: (832) 625-8251 77389
email: Kevin.j.vaughan@exxonmobil.com

Signature Page for Consent Decree regarding the Sauget Area 1 Superfund Site

FOR RUAN TRANSPORT CORP.

12/23/16
Date


Name (print): Susan M. Fitzsimmons
Title: Vice President + General Counsel
Address: Coleto Grand Avenue, Des Moines, IA 50309

Agent Authorized to Accept Service
on Behalf of Above-signed Party:

Name (print): Dale E. Hermeling
Title: Attorney - Jenkins & Kling, P.C.
Address: 150 N. Meramec Ave., Suite 400
Phone: St. Louis, MO 63105
email: 314-721-2525
dhermeling@jenkinskling.com

Signature Page for Consent Decree regarding the Sauget Area 1 Superfund Site

FOR THE ESTATE OF HAROLD W. WIESE

1.31.17
Date

H E Wiese
HAROLD E. WIESE
Executor of the Estate of Harold W. Wiese
Address: C/O W WITTENBERG

Agent Authorized to Accept Service
on Behalf of Above-signed Party:

Name (print): WALTER L. WITTENBERG
Title: COUNSEL
Address: 1050 BROADWAY SUITE 2000
Phone: ST LOUIS MO 63102
email: 314-241-9090
WLW@GREENSFELDER.COM

Signature Page for Consent Decree regarding the Sauget Area 1 Superfund Site

FOR WIESE USA, Inc.
(f/k/a Wiese Planning and Engineering, Inc.)

1.31.17
Date

H E Wiese
Name (print): HAROLD E WIESE
Title: PRESIDENT
Address: C/O W WITTENBERG

Agent Authorized to Accept Service
on Behalf of Above-signed Party:

Name (print): WALTER L. WITTENBERG
Title: COUNSEL
Address: 10 SO. BROADWAY SUITE 2000
Phone: ST LOUIS MO 63102
email: 314 241-9090
WLW@GREENSFELDER.COM

Signature Page for Consent Decree regarding the Sauget Area 1 Superfund Site

**FOR DORIS M. TOLBIRD
REVOCABLE LIVING TRUST #1**

12/15/16
Date

Tammy Read
Name (print): Tammy Read
Title: Trustee
Address: **Non-Responsive** IL 62236

Agent Authorized to Accept Service
on Behalf of Above-signed Party:

Name (print): Michael Read
Title: ATTY
Address: 114 E LINCOLN, Bellville, IL 62220
Phone: 618-580-3122
email: pmichael31752@sbcglobal.net

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 99-CV-063-NJR-PMF
)	
PHARMACIA LLC, SOLUTIA INC.,)	
CERRO FLOW PRODUCTS LLC,)	
and EXXONMOBIL OIL)	
CORPORATION,)	
)	
Defendants.)	

ORDER

ROSENSTENGEL, District Judge:

On April 7, 2017, Plaintiff United States of America filed an unopposed motion for entry of the proposed Consent Decree lodged with the Court on February 17, 2017 (Doc. 920). Appearing to the Court that the settlement set forth in the Consent Decree is fair, adequate, and reasonable, consistent with the United States Constitution and the mandate of Congress, and in the public interest, it is hereby **ORDERED** that the unopposed motion for entry of the consent decree (Doc. 929) is **GRANTED**.

Entry of the Consent Decree will be effected by the Court's signature on the proposed Consent Decree (Doc. 920) and its subsequent entry on the docket.

IT IS SO ORDERED.

DATED: April 7, 2017

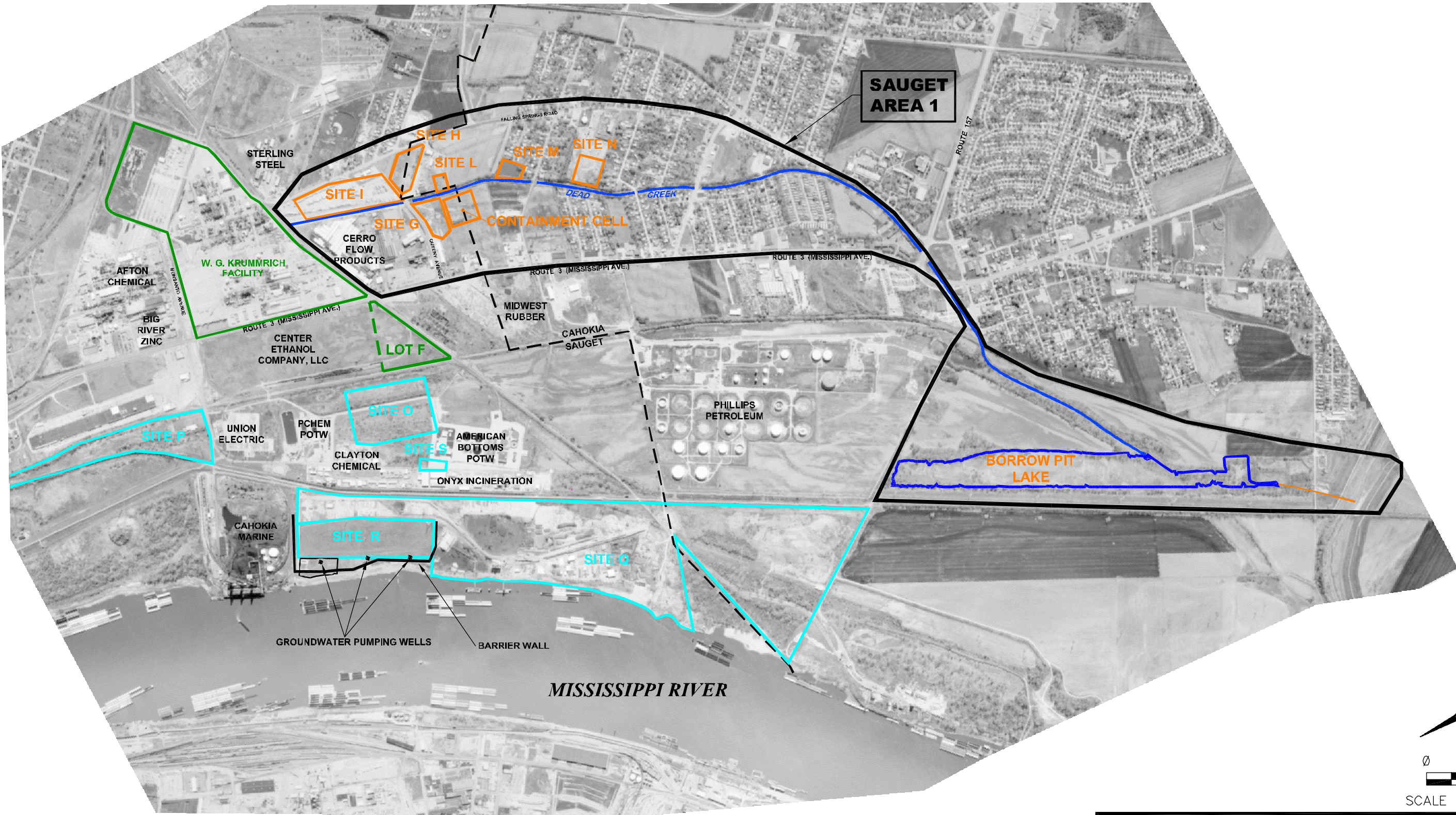


NANCY J. ROSENSTENGEL
United States District Judge

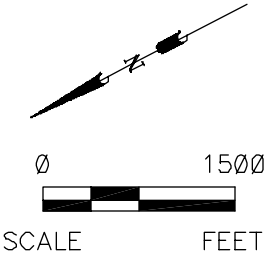
Appendix A

(Site Map)

APPENDIX A



- LEGEND
- SAUGET AREA 1 SITE
 - DEAD CREEK
 - W.G. KRUMMRICH FACILITY
 - SAUGET AREA 2 SITE



SAUGET AREA 1 REMEDIAL INVESTIGATION REPORT SAUGET AND CAHOKIA, ILLINOIS		PROJECT NO. 21562123
URS		
DRN. BY:lrm 9/4/09 DSGN. BY:ss CHKD. BY:	Site Location Map	FIG. NO. 1-2

Appendix C

(Statement of Work)

REMEDIAL DESIGN/REMEDIAL ACTION

STATEMENT OF WORK

OPERABLE UNIT 1

SAUGET AREA 1 SUPERFUND SITE

Sauget and Cahokia, St. Clair County, State of Illinois

EPA Region 5

December 2016

TABLE OF CONTENTS

1.	INTRODUCTION	1
2.	COMMUNITY INVOLVEMENT	8
3.	REMEDIAL DESIGN	12
4.	REMEDIAL ACTION.....	15
5.	CONTINGENCY REMEDY	19
6.	REPORTING	20
7.	DELIVERABLES	21
8.	SCHEDULES	27
9.	STATE PARTICIPATION.....	29
10.	REFERENCES	29

1. INTRODUCTION

1.1 Purpose of the SOW. This Statement of Work (SOW) sets forth the procedures and requirements for implementing the Work.

1.2 Structure of the SOW.

- Section 2 (Community Involvement) sets forth EPA's and Settling Defendants' (SDs') responsibilities for community involvement.
- Section 3 (Remedial Design) sets forth the process for developing the RD, which includes the submission of specified primary deliverables.
- Section 4 (Remedial Action) sets forth requirements regarding the completion of the RA, including primary deliverables related to completion of the RA.
- Section 5 (Contingency Remedy) sets forth SDs obligations regarding implementation of contingency remedies.
- Section 6 (Reporting) sets forth SDs' reporting obligations.
- Section 7 (Deliverables) describes the content of the supporting deliverables and the general requirements regarding SDs' submission of, and EPA's review of, approval of, comment on, and/or modification of, the deliverables.
- Section 8 (Schedules) sets forth the schedule for submitting the primary deliverables, specifies the supporting deliverables that must accompany each primary deliverable, and sets forth the schedule of milestones regarding the completion of the RA.
- Section 9 (State Participation) addresses State participation, and
- Section 10 (References) provides a list of references, including URLs.

1.3 The Scope of the Remedy includes the actions described in Section 2.12 of the ROD and discussed below.

Under the federal Superfund law, EPA selected the remedy for Sauget Area 1 (SA1), Operable Unit 1 (OU1) (the Selected Remedy) as Alternative 5 of the SA1 OU1 Record of Decision (ROD). The SDs shall implement the Selected Remedy, which includes actions that will result in: (1) treatment, through off-Site incineration, of the pooled residual dense non-aqueous phase liquids (DNAPL)¹ recovered from Site I South; (2) treatment,

¹ DNAPLs are "dense non-aqueous phase liquids" that are denser than water. Because of their physical and chemical properties, they tend to sink vertically to the bottom of the groundwater aquifer and do not mix easily with water, acting as a continual source of groundwater contamination until they are removed or dissipate. Residual phase DNAPL is trapped in the pore spaces between the soil particles, and cannot be easily moved hydraulically.

through in-situ aerobic biodegradation, of contaminants of concern (COCs) in areas of sites G, H, and I South, and residual DNAPL present in the middle hydrogeologic unit (MHU) and deep hydrogeologic unit (DHU), using pulsed air biosparging (PABS) systems; (3) protection against exposure to wastes and COCs, through installation of landfill caps and relocation of utility corridors; (4) protection against exposure to wastes and COCs, through creation and implementation of institutional and access controls; (5) implementation of remedy monitoring and reporting; and (6) proper operation, maintenance and closure of the Site containment cell.

This Selected Remedy for OU1 at Sauget Area 1 addresses, among other wastes, principal threat wastes that are present on the Site. A principal threat waste is a source material that generally cannot be reliably contained, or would present a significant risk to human health or the environment should exposure occur. Principal threat wastes have been identified in the following two areas at the Site: pooled DNAPL that is present at Site I South, and subsurface soils contaminated with polychlorinated biphenyls (PCBs) and 2,3,7,8-TCDD-TEQ (dioxins) with risks above EPA's principal threat waste threshold of 1×10^3 in the utility corridor along Queeny Avenue, adjacent to Site H. The Selected Remedy addresses these areas by applying PABS technology, treating the DNAPL recovered at Site I South through off-Site incineration, and relocating the utilities in the utility corridor to prevent unacceptable risk to utility workers during excavation/repair work.

To address the remaining low-level threat waste, engineering controls² in the form of engineered covers will be used. Engineered covers meeting the requirements of 35 IAC § 724-compliant caps will be installed over sites G, H, I South, and L.

The Selected Remedy includes, but is not limited to, the components listed below. These remedy components described in this SOW will be implemented, but the details of these components are potentially subject to change with EPA approval based upon findings or further evaluation during the Remedial Design or Remedial Action:

- Recovery of Pooled DNAPL at Site I South: The recovery of pooled DNAPL requires application of a removal technology that is designed and operated to recover DNAPL that is pooled at the base of a water-bearing zone. The recovered DNAPL is pumped from an extraction well and collected in a tank. When a sufficient volume has accumulated in the tank, the DNAPL is transported off-Site for incineration at a permitted facility.

Since November 2008, pooled DNAPL recovery at the Site I South bedrock well (labeled "BR-I") has been performed on an every-other-week schedule. The DNAPL serves as a large and significant source of dissolved contaminants to the area groundwater plumes. Removal of the pooled DNAPL will, therefore, help reduce the time it will take for the plume to be

² Engineering controls encompass a variety of engineered and constructed physical barriers (e.g., soil capping, sub-surface venting systems, mitigation barriers, fences) to contain and/or prevent exposure to contamination on a property.

remediated. Implementation of this remedy component will require bringing a permanent electrical power source to BR-I, programming the pump controller for automated operation, and obtaining and installing a larger tank for storage of the recovered fluids. Implementation also requires removal and offsite incineration of the DNAPL at a permitted facility.

Initially, as part of the RA, the operation of the pump will be increased to once per day. After a period of operation and approval by EPA, the pump may be operated twice per week and then once per month dependent on the rate of DNAPL recovery. If and when DNAPL is no longer able to be recovered, the DNAPL recovery may be discontinued, upon EPA approval. Fluid levels will be monitored at BR-I and at nearby well A1-19. Recovered DNAPL will be transported to an approved off-Site facility for incineration.

The extent of pooled DNAPL in bedrock in the area surrounding BR-I will be investigated during the remedial design phase of the project. Recovery of pooled DNAPL from additional bedrock wells in the area of BR-I will be performed if EPA determines this action will be productive based on the results of this investigation.

The pooled DNAPL that is present at Site I South is considered a principal threat waste material. The pooled DNAPL recovery component addresses this principal threat waste material through treatment and will also reduce the mass of the COCs in the source area at Site I South.

- Pulsed Air Biosparging at Residual DNAPL Areas at Sites G, H, and I South: The operation of the PABS systems is characterized by high flow rate pulsed sparging of atmospheric air to the aquifer to promote in-situ aerobic biodegradation and thereby reduce the mass of COCs in the MHU and DHU. Each PABS system is comprised of a grid of nested injection well pairs screened in the MHU and DHU and connected to a compressor to supply atmospheric air. The well grids will be located in the areas of residual DNAPL in the MHU and DHU that were identified at sites G, H, and I South during the DNAPL characterization and remediation study, as shown in Figure 7 of the ROD.

The area of residual DNAPL at Site I South extends beneath former Creek Segment A and into an area of the Cerro facility, where several buildings are located. These areas are not suitable for implementation of PABS systems due to the presence of the buildings and the presence of an impermeable liner at the base of former Creek Segment A, which was closed and remediated in 1990-1991, because soil vapors will tend to accumulate in the waste and fill materials in the unsaturated zone beneath the impermeable barriers such as a building foundation or landfill liner, or cause the release of vapors into buildings. The balance of Site I South that is underlain by residual DNAPL will be treated with pulsed air biosparging. Each sparge well pair will also be equipped with a passive vent well to

recover vapors that in turn will be treated in drums of granular activated carbon.

Pilot Test: To evaluate the feasibility and effectiveness of full-scale operations of the PABS system, a pilot test will be conducted for a period of approximately one year to determine operational parameters, measure performance characteristics, and verify the optimal spacing of the biosparge well pairs for a full-scale PABS system.

The pilot test will include the following: baseline soil and groundwater sampling and testing; installation of four sparge well pairs with passive vent wells and carbon treatment drums; installation of groundwater monitoring wells at and near the pilot test area; construction of the pilot system and piping; operation of the pilot test for one year; and post-test soil and groundwater sampling to estimate COC mass removal.

The pilot test system will be located at Site I South and will consist of four sparging locations, each containing two nested injection wells targeting the MHU and DHU and a passive vent well screened in the shallow hydrogeologic unit (SHU) and upper few feet of the MHU. Each biosparging well will consist of a two-inch diameter stainless steel well with a two-foot long wire-wrapped screen. Biosparge wells will be completed with a sand filter pack around the well screen, a hydrated bentonite seal placed atop the filter pack, and a cement/bentonite grout surface seal installed from above the filter pack seal to ground surface. Screened intervals will be placed at approximately 70 feet and 100 feet below ground surface in the MHU and DHU respectively.

A network of groundwater monitoring wells will be installed to assess the performance of the PABS pilot test. Nested monitoring wells will be installed at 10 locations and will be installed at depths targeting the treatment zones within the MHU and DHU. Groundwater samples will be collected prior to startup of the pilot test and regularly during the operation of the system. The objective of the groundwater monitoring program will be to assess dissolved oxygen distribution and to establish that degradation of key volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs) (chlorobenzene; 1,4-dichlorobenzene; benzene; and 4-chloroaniline) is occurring as a result of biosparging. Additionally, baseline soil concentrations in the MHU and DHU will be determined via soil samples collected during the installation of groundwater monitoring wells.

The pilot test system will include a biosparge skid that houses the above-ground components for operating the system. The skid will contain all necessary safety interlocks and alarms, such as pressure relief valves and emergency stop, to ensure safe operation of the system.

Controlling the volume and frequency of air sparging and monitoring the indoor air of nearby buildings will be required in order to prevent the vapors generated by the PABS systems from presenting unacceptable risks to indoor workers present in nearby buildings. These nearby buildings and their approximate distances from the closest PABS well pairs include: Sauget Village Hall, 200 feet southeast; Cerro Flow Products, 150 feet west; Wiese Engineering building, 400 feet west; and Metro Construction Equipment, 150 feet east (relative to Site G).

The pilot test will include monitoring and control of emissions from the passive vent wells that are collocated with the sparge well pairs. As appropriate, passive vent wells will also be installed next to nearby buildings for monitoring during the pilot test. Additionally, indoor air monitoring will be required at nearby buildings to ensure indoor air quality is protective to indoor workers during the pilot test of the PABS systems.

Following completion of the pilot test a determination will be made as to whether PABS is a feasible technology for Sauget Area 1. If the EPA determines that the technology is not feasible at this site, then the contingent remedy (Alternative # 3) from the ROD will be implemented.

If PABS is determined to be a feasible technology as expected, and prior to full-scale design of the PABS systems at sites G, H, and I South, additional soil boring investigations will be needed to more precisely delineate the extent of the residual DNAPL areas shown on Figure 7 of the ROD.

Until the pilot test is performed, it is not possible to precisely estimate the source mass removal that can be achieved in the MHU and DHU using operation of a PABS system; however, some studies have shown that under different circumstances than those in Sauget, source mass removal can result in as much as 75% to 90% mass reduction (Brown et al., 1998; Machackova; Sale et al., 2008; Sperry et al., 2001).

- 35 IAC § 724-Compliant Soil or Crushed Rock Caps at Sites G, H, I South, and L: A 35 IAC § 724-compliant soil or crushed rock cap will meet the performance standards of a fully designed Resource Conservation and Recovery Act (RCRA) Subtitle C cap, except the component requiring long-term minimization of migration of liquids, which is not appropriate in the context of implementing the Selected Remedy. (See ROD, Section 2.10.2). Therefore, the 35 IAC § 724-compliant caps will not include the low-permeability component of RCRA Subtitle C designed caps. The Selected Remedy, Alternative 5, includes 35 IAC § 724-compliant soil or crushed rock caps at sites G, H, I South, and L, which will protect against exposure to the waste and affected soils while providing permeability for air transfer and infiltration of moisture. Soil or crushed rock caps are more appropriate for use with the PABS systems than impermeable RCRA Subtitle C designed caps. As mentioned, this is because soil vapors will

tend to accumulate in the waste and fill materials in the unsaturated zone beneath an impermeable barrier such as a Subtitle C designed cap. The conceptual footprint of the soil or crushed rock caps at sites G, H, L, and I South are shown on Figures 5 and 6 of the ROD, respectively

At Site G, the 35 IAC § 724-compliant soil or crushed rock cap will be constructed at the northern portion of the fenced area as shown on Figure 5 of the ROD. The conceptual footprint of the soil or crushed rock cap within the fenced area corresponds to the approximate extent of waste and fill discovered to exist based on boundary trenching conducted during the Remedial Investigation (RI). Waste was not found in the southern portion of the fenced area at Site G; therefore, the soil or crushed rock cap will not include that area. The cross sections of the soil or crushed rock cap for Site G are shown on Figure 8 of the ROD. At Site G West, asphalt pavement will be installed to cap the parking area surrounding the Wiese Engineering building.

At Site H, which is an undeveloped property, the soil or crushed rock cap will include the entire area of Site H as shown on Figure 5 of the ROD. The conceptual footprint of the 35 IAC § 724-compliant soil or crushed rock cap at Site H corresponds to the approximate extent of waste and fill based on source area boundary investigations conducted during the RI.

At Site I South, a crushed rock cap will be constructed instead of a soil cap so that Site I South can continue to be used for truck trailer parking. The crushed rock cap at Site I South will need to incorporate the existing features of the Site, and in some locations the existing pavement may need to serve as the final cover. The conceptual footprint of the Site I South 35 IAC § 724-compliant crushed rock cap is shown on Figure 6 of the ROD and corresponds to the approximate extent of waste and fill based on source area boundary investigations conducted during the RI. The cross section of the crushed rock cap for Site I South is shown on Figure 8 of the ROD.

At Site L, capping will involve installation of a 35 IAC § 724-compliant soil or crushed rock cap, which will correspond to the approximate extent of waste and fill based on the source area boundary investigations conducted during the RI.

- Utility Relocation in the Utility Corridor adjacent to Site H, south of Queeny Avenue: This component includes the following: i) relocation, to uncontaminated areas, of a water supply line that runs through Site I South to the Sauget Village Hall; ii) relocation, to uncontaminated areas, of a 14-inch diameter fuel pipeline that is located in the utility corridor along Queeny Avenue adjacent to Site H; and iii) relocation, to uncontaminated areas, of a buried telephone cable located in the utility corridor along Queeny Avenue adjacent to Site H. The replacement water line and fuel pipeline will be placed along alternative corridors routed around the fill

areas. The replacement telephone line will either be placed along an alternative corridor routed around the Sauget Area 1 fill areas or installed on overhead poles.

Relocation of these utilities will prevent utility workers performing repair or maintenance activities from potentially coming into contact with wastes in Site I South and the principal threat waste that was encountered in the utility corridor adjacent to Site H.

- Containment Cell O&M and Closure: The existing containment cell is a RCRA and Toxic Substances Control Act-compliant containment cell that was constructed as part of the Dead Creek Removal Action ordered by EPA in the CERCLA Unilateral Order issued on May 31, 2000 (Docket N. V-W-99-C-55) (Dead Creek Removal Action UAO). The cell is located immediately west of Creek Segment B and south of Site G. The materials that were placed in the containment cell included sediments and creek-bottom soils excavated from Dead Creek, Site M and Borrow Pit Lake.

Long-term Operations and Maintenance (O&M) of the containment cell is required as part of the Selected Remedy for Sauget Area 1, OU1 set forth in the ROD. The UAO states that the long-term O&M of the containment cell will be addressed in the RI/FS process for the Site. Pursuant to the Remedial Investigation/Feasibility Study (RI/FS), requirements associated with the O&M of the containment cell are detailed in the Containment Cell Operation and Maintenance Plan (Golder, 2008).

In this case, the plan is to defer the long term O&M and closure of the cell over to the State RCRA permitting requirements; however, this will be done only after this RD/RA Consent Decree for Sauget Area 1 is entered. Until then, and until the operation, maintenance and closure activities for the containment cell are deferred over to RCRA permitting requirements, Settling Defendants shall implement the following activities that are currently required under the Golder 2008 O&M Plan: i) regular inspections of the cap; ii) sampling of primary and secondary leachate with analysis for pH, specific conductance, PCBs, and chlorinated VOCs; iii) collection and treatment of leachate; iv) quarterly sampling of treatment system effluent with analysis for VOCs, SVOCs, PCBs, and metals; v) quarterly sampling of selected monitoring wells with analysis for VOCs, PCBs, and metals; and vi) maintenance and repairs as needed (e.g., replacement or repair of pumps and mowing, fertilizing, and re-seeding of cell cap). After this RD/RA CD is entered, and after the cell is permitted under State RCRA requirements, EPA will terminate the Dead Creek Removal Action UAO. Should permitting under RCRA not proceed, for whatever reason, EPA's action will be to amend the Dead Creek Removal Action UAO to include timeframes to implement the closure/post closure requirements contained in Appendix 2 of the UAO.

- Monitoring Well Network: The monitoring well network involves installation of a sufficient number of monitoring wells and the initiation of periodic groundwater sampling and testing for VOCs, SVOCs, and selected geochemical parameters in affected areas. The purpose of the monitoring well network is to monitor the effectiveness of the soil and groundwater source area remedy of OU1, as set forth in the ROD. The exact number and location of wells in the groundwater monitoring network will be established during the remedial design phase.
- Institutional and access controls at Sites G, H, I South, and L: Institutional controls that could be implemented include deed restrictions or zoning restrictions, and access restrictions could include fences or warning signs. At a minimum, institutional controls will be implemented in accordance with the Illinois Uniform Environmental Covenants Act to restrict residential development of the Site.
- No Further Action For Dead Creek Segments A, B, C, D, E, and F, Borrow Pit Lake, Site M, Site I North, and Site N: No unacceptable risks were identified for Dead Creek Segments A through F, Borrow Pit Lake, Site M, Site I North, and Site N; therefore, no further remedial actions are required for these areas.

1.4 The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Consent Decree (CD), have the meanings assigned to them in CERCLA, in such regulations, or in the CD, except that the term “Paragraph” or “¶” means a paragraph of the SOW, unless otherwise stated.

2. COMMUNITY INVOLVEMENT

2.1 Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. Previously during the RI/FS phase, EPA developed a Community Involvement Plan (CIP) for the Site. Pursuant to 40 C.F.R. § 300.435(c), EPA shall review the existing CIP and determine whether it should be revised to describe further public involvement activities during the Work that are not already addressed or provided for in the existing CIP, including, if applicable, any Technical Assistance Grant (TAG), any use of the Technical Assistance Services for Communities (TASC) contract, and/or any Technical Assistance Plan (TAP).
- (b) If requested by EPA, SDs shall support EPA’s community involvement activities. This may include providing online access to initial submissions and updates of deliverables to (1) Community Advisory Groups, (2) Technical Assistance Grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. EPA may describe in its CIP SDs’ responsibilities for community involvement activities. All community

involvement activities conducted by SDs at EPA's request are subject to EPA's oversight.

- (c) **SDs' CI Coordinator.** If requested by EPA, SDs shall, within 15 days, designate and notify EPA of SDs' Community Involvement Coordinator (SDs' CI Coordinator). SDs may hire a contractor for this purpose. SDs' notice must include the name, title, and qualifications of the SDs' CI Coordinator. SDs' CI Coordinator is responsible for providing support regarding EPA's community involvement activities, including coordinating with EPA's CI Coordinator regarding responses to the public's inquiries about the Site.

2.2 SDs' Responsibilities for Technical Assistance

- (a) If EPA requests, SDs shall arrange for a qualified community group to receive the services of a technical advisor(s) who can: (i) help group members understand Site cleanup issues (specifically, to interpret and comment on Site-related documents developed under this SOW); and (ii) share this information with others in the community. The technical advisor(s) will be independent from the SDs. SDs' TAP assistance will be limited to \$50,000, except as provided in ¶ 2.2(d)(3), and will end when EPA issues the Certification of Work Completion under ¶ 4.7. SDs shall implement this requirement under a Technical Assistance Plan (TAP).
- (b) If EPA requests, SDs shall cooperate with EPA in soliciting interest from community groups regarding a TAP at the Site. If more than one community group expresses an interest in a TAP, SDs shall cooperate with EPA in encouraging the groups to submit a single, joint application for a TAP.
- (c) If EPA requests, SDs shall, within 30 days, submit a proposed TAP for EPA approval. The TAP must describe the SDs' plans for the qualified community group to receive independent technical assistance. The TAP must include the following elements:
 - (1) For SDs to arrange for publication of a notice in local media that they have received a Letter of Intent (LOI) to submit an application for a TAP. The notice should explain how other interested groups may also try to combine efforts with the LOI group or submit their own applications, by a reasonable specified deadline;
 - (2) For SDs to review the application(s) received and determine the eligibility of the community group(s). The proposed TAP must include eligibility criteria as follows:
 - (i) A community group is eligible if it is: (a) comprised of people who are affected by the release or threatened release at the Site, and (b) able to demonstrate its ability to adequately and responsibly manage TAP-related responsibilities.

- (ii) A community group is ineligible if it is: (a) a potentially responsible party (PRP) at the Site, represents such a PRP, or receives money or services from a PRP (other than through the TAP); (b) affiliated with a national organization; (c) an academic institution; (d) a political subdivision; (e) a tribal government; (f) a group established or presently sustained by any of the above ineligible entities; or (g) a group in which any of the above ineligible entities is represented.
 - (3) For SDs to notify EPA of their determination on eligibility of the applicant group(s) to ensure that the determination is consistent with the SOW before notifying the group(s);
 - (4) If more than one community group submits a timely application, for SDs to review each application and evaluate each application based on the following elements:
 - (i) The extent to which the group is representative of those persons affected by the Site; and
 - (ii) The effectiveness of the group's proposed system for managing TAP-related responsibilities, including its plans for working with its technical advisor and for sharing Site-related information with other members of the community.
 - (5) For SDs to document their evaluation of, and their selection of, a qualified community group, and to brief EPA regarding their evaluation process and choice. EPA may review SDs' evaluation process to determine whether the process satisfactorily follows the criteria in ¶ 2.2(c)(4). TAP assistance may be awarded to only one qualified group at a time;
 - (6) For SDs to notify all applicant(s) about SDs' decision;
 - (7) For SDs to designate a person (TAP Coordinator) to be their primary contact with the selected community group;
 - (8) A description of SDs' plans to implement the requirements of ¶ 2.2(d) (Agreement with Selected Community Group); and
 - (9) For SDs to submit quarterly progress reports regarding the implementation of the TAP.
- (d) **Agreement with Selected Community Group**
- (1) SDs shall negotiate an agreement with the selected community group that specifies the duties of SDs and the community group. The agreement must specify the activities that may be reimbursed under the TAP and the activities that may not be reimbursed under the TAP. The list of allowable

activities must be consistent with 40 C.F.R. § 35.4070 (e.g., obtaining the services of an advisor to help the group understand the nature of the environmental and public health hazards at the Site and the various stages of the response action, and communicating Site information to others in the community). The list of non-allowable activities must be consistent with 40 C.F.R. § 35.4075 (e.g., activities related to litigation or political lobbying).

- (2) The agreement must provide that SDs' review of the Community Group's recommended choice for Technical Advisor will be limited, consistent with 40 C.F.R. §§ 35.4190 and 35.4195, to criteria such as whether the advisor has relevant knowledge, academic training, and relevant experience as well as the ability to translate technical information into terms the community can understand.
- (3) The agreement must provide that the Community Group is eligible for additional TAP assistance, if it can demonstrate that it has effectively managed its TAP responsibilities to date, and that at least three of the following 10 factors are satisfied:
 - (i) EPA expects that more than eight years (beginning with the initiation of the RI/FS) will pass before construction completion will be achieved;
 - (ii) EPA requires treatability studies or evaluation of new and innovative technologies;
 - (iii) EPA reopens the ROD;
 - (iv) The public health assessment (or related activities) for the Site indicates the need for further health investigations and/or health-related activities;
 - (v) After SDs' selection of the Community Group for the TAP, EPA designates additional operable units at the Site;
 - (vi) EPA issues an Explanation of Significant Differences for the ROD;
 - (vii) After SDs' selection of the Community Group, a legislative or regulatory change results in significant new Site information;
 - (viii) Significant public concern about the Site exists, as evidenced, e.g., by relatively large turnout at meetings, the need for multiple meetings, the need for numerous copies of documents to inform community members, etc.;
 - (ix) Any other factor that, in EPA's judgment, indicates that the Site is unusually complex; or

- (x) An RI/FS costing at least \$2 million was performed at the Site.
- (4) SDs are entitled to retain any unobligated TAP funds upon EPA's Certification of Work Completion under ¶ 4.7.
- (5) SDs shall submit a draft of the proposed agreement to EPA for its comments.

3. REMEDIAL DESIGN

3.1 PABS Pilot Test. The SDs shall submit a PABS Pilot Test Work Plan (PABS Work Plan), which shall document the overall management strategy for performing the design, construction, operation, maintenance and monitoring of the PABS Pilot Test for EPA review and approval. The PABS Work Plan shall document the responsibility and authority of all organizations and key personnel involved with the implementation and shall include a description of qualifications of key personnel directing the work, including contractor personnel. The PABS Work Plan shall also contain a schedule of the Pilot Test activities.

(a) **PABS Pilot Test Work Plan.** SDs shall submit a PABS Pilot Test Work Plan for EPA approval. The PABS Pilot Test Work Plan must, at a minimum, include:

- (1) A pre-design Quality Assurance Project Plan (QAPP);
- (2) A Health and Safety (H&S) Plan;
- (3) A Field Sampling Plan (FSP);
- (4) A Schedule to conduct the PABS Pilot Test; and
- (5) Cross references to quality assurance/quality control (QA/QC) requirements set forth in the QAPP as described in ¶ 7.7(d).

(b) Following the PABS Pilot Test, SDs shall submit a PABS Pilot Test Report. This report must include:

- (1) Summary of the activities performed as a part of the PABS Pilot Test;
- (2) Summary of PABS Pilot Test results;
- (3) Summary of validated data (i.e., tables and graphics);
- (4) Data validation reports and laboratory data reports;
- (5) Narrative interpretation of data and results;
- (6) Results of statistical and modeling analyses;
- (7) Photographs documenting the work conducted; and

- (8) Conclusions and recommendations for RD, including design parameters and criteria.
- (c) EPA may require SDs to supplement the PABS Pilot Test Report and/or to perform additional related studies.

3.2 RD Work Plan. SDs shall submit a Remedial Design Work Plan (RDWP) for EPA approval. The RDWP must include:

- (a) Plans for implementing all RD activities identified in this SOW, in the RDWP, or required by EPA to be conducted to develop the RD;
- (b) A description of the overall management strategy for performing the RD, including a proposal for phasing of design and construction, if applicable;
- (c) A description of the proposed general approach to contracting, construction, operation, maintenance, and monitoring of the Remedial Action (RA) as necessary to implement the Work;
- (d) A description of the responsibility and authority of all organizations and key personnel involved with the development of the RD;
- (e) Descriptions of any areas requiring clarification and/or anticipated problems (e.g., data gaps);
- (f) Description of any proposed pre-design investigation;
- (g) Description of any proposed treatability study;
- (h) Descriptions of any applicable permitting requirements and other regulatory requirements;
- (i) Description of plans for obtaining access in connection with the Work, such as property acquisition, property leases, and/or easements; and
- (j) All supporting deliverables required to accompany the RDWP as specified in the RD Schedule set forth in ¶ 8.2 (“RD Schedule”) and described in ¶ 7.7 (Supporting Deliverables).

3.3 SDs shall meet regularly with EPA to discuss design issues as necessary, as directed or determined by EPA.

3.4 Pre-Design Investigation. The purpose of the Pre-Design Investigation (PDI) is to address data gaps by conducting additional field investigations.

- (a) **PDI Work Plan.** If EPA requests, SDs shall submit a PDI Work Plan (PDIWP) for EPA approval. The PDIWP must include:
 - (1) An evaluation and summary of existing data and description of data gaps;

- (2) A sampling plan including media to be sampled, contaminants or parameters for which sampling will be conducted, location (areal extent and depths), and number of samples; and
 - (3) Cross references to QA/QC requirements set forth in the QAPP as described in ¶ 7.7(d).
- (b) Following the PDI, SDs shall submit a PDI Evaluation Report. This report must include:
 - (1) Summary of the investigations performed;
 - (2) Summary of investigation results;
 - (3) Summary of validated data (i.e., tables and graphics);
 - (4) Data validation reports and laboratory data reports;
 - (5) Narrative interpretation of data and results;
 - (6) Results of statistical and modeling analyses;
 - (7) Photographs documenting the work conducted; and
 - (8) Conclusions and recommendations for RD, including design parameters and criteria.
- (c) EPA may require SDs to supplement the PDI Evaluation Report and/or to perform additional pre-design studies.

3.5 Preliminary (30%) RD. SDs shall submit a Preliminary (30%) RD for EPA's comment. The Preliminary RD must include:

- (a) A design criteria report, as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995);
- (b) Preliminary drawings and specifications;
- (c) Descriptions of permit requirements, if applicable;
- (d) Preliminary Operation and Maintenance (O&M) Plan and O&M Manual;
- (e) A description of how the RA will be implemented in a manner that minimizes environmental impacts in accordance with EPA's *Principles for Greener Cleanups* (Aug. 2009);
- (f) A description of monitoring and control measures to protect human health and the environment, such as air monitoring and dust suppression, during the RA;

- (g) Any proposed revisions to the RA Schedule that is set forth in ¶ 8.3 (RA Schedule); and
- (h) All supporting deliverables required to accompany the Preliminary RD as specified in the RD Schedule set forth in ¶ 8.2 (RD Schedule) and described in ¶ 7.7 (Supporting Deliverables).

3.6 Pre-Final (95%) RD. SDs shall submit the Pre-final (95%) RD for EPA's comment. The Pre-final RD must be a continuation and expansion of the previous design submittal and must address EPA's comments regarding the Preliminary RD. The Pre-final RD will serve as the approved Final (100%) RD if EPA approves the Pre-final RD without comments. The Pre-final RD must include:

- (a) A complete set of construction drawings and specifications that are: (1) certified by a registered professional engineer; (2) suitable for procurement; and (3) follow the Construction Specifications Institute's MasterFormat 2012;
- (b) A survey and engineering drawings showing existing Site features, such as elements, property borders, easements, and Site conditions;
- (c) Pre-Final versions of the same elements and deliverables as are required for the Preliminary RD;
- (d) A specification for photographic documentation of the RA; and
- (e) Supporting deliverables as specified in the RD Schedule.

3.7 Final (100%) RD. SDs shall submit the Final (100%) RD for EPA approval. The Final RD must address EPA's comments on the Pre-final RD and must include final versions of all Pre-final RD deliverables.

4. REMEDIAL ACTION

4.1 RA Work Plan. SDs shall submit an RA Work Plan (RAWP) for EPA approval that includes:

- (a) A proposed RA Construction Schedule in a Gantt chart;
- (b) An updated health and safety plan that covers activities during the RA; and
- (c) If applicable: Plans for satisfying permitting requirements, including obtaining permits for off-site activity and for satisfying substantive requirements of permits for on-site activity.

4.2 Meetings and Inspections

- (a) **Preconstruction Conference.** SDs shall hold a preconstruction conference with EPA and others as directed or approved by EPA and as described in the *Remedial*

Design/Remedial Action Handbook, EPA 540/R-95/059 (June 1995). SDs shall prepare minutes of the conference and shall distribute the minutes to all Parties.

- (b) **Periodic Meetings.** During the construction portion of the RA (RA Construction), SDs shall meet regularly with EPA, and others as directed or determined by EPA, to discuss construction issues. SDs shall distribute an agenda and list of attendees to all Parties prior to each meeting. SDs shall prepare minutes of the meetings and shall distribute the minutes to all Parties.
- (c) **Inspections**
 - (1) EPA shall conduct periodic inspections of the Work. At EPA's request, the Supervising Contractor or other designee shall accompany EPA during inspections.
 - (2) If requested: SDs shall provide personal protective equipment needed for EPA personnel and any oversight officials to perform their oversight duties.
 - (3) Upon notification by EPA of any deficiencies in the RA Construction, SDs shall take all necessary steps to correct the deficiencies and/or bring the RA Construction into compliance with the approved Final RD, any approved design changes, and/or the approved RAWP. If applicable, SDs shall comply with any schedule provided by EPA in its notice of deficiency.

4.3 Emergency Response and Reporting

- (a) **Emergency Response and Reporting.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, SDs shall: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in ¶ 4.3(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan, the Emergency Response Plan, and any other deliverable approved by EPA under the SOW.
- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Work that SDs are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, SDs shall immediately notify the authorized EPA officer orally.
- (c) The "authorized EPA officer" for purposes of immediate oral notifications and consultations under ¶ 4.3(a) and ¶ 4.3(b) is the EPA Project Coordinator, the EPA Alternate Project Coordinator (if the EPA Project Coordinator is unavailable), or

the EPA Emergency Response Branch, Region 5 (if neither EPA Project Coordinator is available).

- (d) For any event covered by ¶ 4.3(a) and ¶ 4.3(b), SDs shall: (1) within 14 days after the onset of such event, submit a report to EPA describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) within 30 days after the conclusion of such event, submit a report to EPA describing all actions taken in response to such event.
- (e) The reporting requirements under ¶ 4.3 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

4.4 Off-Site Shipments

- (a) SDs may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. SDs will be deemed to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if SDs obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b). SDs may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's *Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992).
- (b) SDs may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. SDs also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. SDs shall provide the notice after the award of the contract for RA construction and before the Waste Material is shipped.

4.5 RA Construction Completion

- (a) For purposes of this ¶ 4.5, "RA Construction" includes, for any RA that involves the construction and operation of a system to achieve Performance Standards (for example, groundwater or surface water restoration remedies), the construction of such system and the performance of all activities necessary for the system to function properly and as designed.

- (b) **Inspection of Constructed Remedy.** SDs shall schedule an inspection to review the construction and operation of the system and to review whether the system is functioning properly and as designed. The inspection must be attended by SDs and EPA and/or their representatives. A re-inspection must be conducted if requested by EPA.
- (c) **Shakedown Period.** There shall be a shakedown period of up to one year for EPA to review whether the remedy is functioning properly and performing as designed. SDs shall provide such information as EPA requests for such review.
- (d) **RA Report.** Following the shakedown period, SDs shall submit an “RA Report” requesting EPA’s determination that RA Construction has been completed. The RA Report must: (1) include statements by a registered professional engineer and by SDs’ Project Coordinator that construction of the system is complete and that the system is functioning properly and as designed; (2) include a demonstration, and supporting documentation, that construction of the system is complete and that the system is functioning properly and as designed; (3) include as-built drawings signed and stamped by a registered professional engineer; (4) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA’s *Close Out Procedures for NPL Sites* guidance (May 2011); and (5) be certified in accordance with ¶ 7.5 (Certification).
- (e) If EPA determines that RA Construction is not complete, EPA shall so notify SDs. EPA’s notice must include a description of, and schedule for, the activities that SDs must perform to complete RA Construction. EPA’s notice may include a schedule for completion of such activities or may require SDs to submit a proposed schedule for EPA approval. SDs shall perform all activities described in the EPA notice in accordance with the schedule.
- (f) If EPA determines, based on the initial or any subsequent RA Report, that RA Construction is complete, EPA shall so notify SDs.

4.6 Certification of RA Completion

- (a) **Monitoring Report.** SDs shall submit a Monitoring Report to EPA requesting EPA’s Certification of RA Completion. The report must: (1) include certifications by a registered professional engineer and by SD’s Project Coordinator that the RA is complete; (2) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA’s *Close Out Procedures for NPL Sites* guidance (May 2011); (3) contain monitoring data to demonstrate that Performance Standards have been achieved; and (4) be certified in accordance with ¶ 7.5 (Certification).
- (b) If EPA concludes that the RA is not Complete, EPA shall so notify SDs. EPA’s notice must include a description of any deficiencies. EPA’s notice may include a schedule for addressing such deficiencies or may require SDs to submit a schedule for EPA approval. SDs shall perform all activities described in the notice in accordance with the schedule.

- (c) If EPA concludes, based on the initial or any subsequent Monitoring Report requesting Certification of RA Completion, that the RA is Complete, EPA shall so certify to SDs. This certification will constitute the Certification of RA Completion for purposes of the CD, including Section XVI of the CD (Covenants by Plaintiff). Certification of RA Completion will not affect SDs' remaining obligations under the CD.

4.7 Certification of Work Completion

- (a) **Work Completion Inspection.** SDs shall schedule an inspection for the purpose of obtaining EPA's Certification of Work Completion. The inspection must be attended by SDs and EPA and/or their representatives.
- (b) **Work Completion Report.** Following the inspection, SDs shall submit a report to EPA requesting EPA's Certification of Work Completion. The report must:
 - (1) include certifications by a registered professional engineer and by SDs' Project Coordinator that the Work, including all O&M activities, is complete; and
 - (2) be certified in accordance with ¶ 7.5 (Certification). If the Monitoring Report submitted under ¶ 4.6(a) includes all elements required under this ¶ 4.7(b), then the Monitoring Report suffices to satisfy all requirements under this ¶ 4.7(b).
- (c) If EPA concludes that the Work is not complete, EPA shall so notify SDs. EPA's notice must include a description of the activities that SDs must perform to complete the Work. EPA's notice must include specifications and a schedule for such activities or must require SDs to submit specifications and a schedule for EPA approval. SDs shall perform all activities described in the notice or in the EPA-approved specifications and schedule.
- (d) If EPA concludes, based on the initial or any subsequent report requesting Certification of Work Completion, that the Work is complete, EPA shall so certify in writing to SDs. Issuance of the Certification of Work Completion does not affect the following continuing obligations: (1) activities under the Periodic Review Support Plan; (2) obligations under Sections VIII (Property Requirements), XX (Retention of Records), and XIX (Access to Information) of the CD; (3) Institutional Controls obligations as provided in the ICIAP; and (4) reimbursement of EPA's Future Response Costs under Section X (Payments for Response Costs) of the CD.

5. CONTINGENCY REMEDY

- 5.1 Testing/Investigations.** If testing and/or investigations are needed for EPA to make a determination whether the contingency remedy selected in the ROD needs to be implemented, SDs shall submit a plan for implementing such testing and/or investigations, shall implement such testing and/or investigations in accordance with EPA's approval and/or modification of such plan, and shall submit reports to EPA regarding the results of such testing and/or investigations.

- 5.2 Reports Regarding Performance of Selected Remedy.** If the ROD provides for implementation of a contingency remedy in the event of failure of the selected remedy to achieve desired performance levels, SDs shall submit such reports as EPA requests regarding the performance of the selected remedy.
- 5.3 Invocation of Contingency Remedy.** If EPA determines that the contingency remedy selected in the ROD needs to be implemented, EPA shall so notify SDs, and shall include a copy of EPA's decision document invoking the contingency remedy.
- 5.4 Implementation of Contingency Remedy.** SD shall implement the contingency remedy in accordance with the EPA notification and consistent with the requirements of Section 3 and Section 4 of this SOW.
- 5.5 Other Modifications.** If EPA determines that implementation of the contingency remedy selected in the ROD will require modifications to any deliverable submitted under this SOW, SDs shall modify those deliverables.

6. REPORTING

- 6.1 Progress Reports.** Commencing with the month following lodging of the CD and until EPA approves the RA Construction Completion, SDs shall submit progress reports to EPA on a monthly basis, or as otherwise requested by EPA. The reports must cover all activities that took place during the prior reporting period, including:
- (a) The actions that have been taken toward achieving compliance with the CD;
 - (b) A summary of all results of sampling, tests, and all other data received or generated by SDs;
 - (c) A description of all deliverables that SDs submitted to EPA;
 - (d) A description of all activities relating to RA Construction that are scheduled for the next six weeks;
 - (e) An updated RA Construction Schedule, together with information regarding percentage of completion, delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;
 - (f) A description of any modifications to the work plans or other schedules that SDs have proposed or that have been approved by EPA; and
 - (g) A description of all activities undertaken in support of the Community Involvement Plan (CIP) during the reporting period and those to be undertaken in the next six weeks.
- 6.2 Notice of Progress Report Schedule Changes.** If the schedule for any activity described in the Progress Reports, including activities required to be described under ¶ 6.1(d),

changes, SDs shall notify EPA of such change at least 7 days before performance of the activity.

7. DELIVERABLES

- 7.1 Applicability.** SDs shall submit deliverables for EPA approval or for EPA comment as specified in the SOW. If neither is specified, the deliverable does not require EPA's approval or comment. Paragraphs 7.2 (In Writing) through 7.4 (Technical Specifications) apply to all deliverables. Paragraph 7.5 (Certification) applies to any deliverable that is required to be certified. Paragraph 7.6 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.
- 7.2 In Writing.** As provided in ¶ 91 of the CD, all deliverables under this SOW must be in writing unless otherwise specified.
- 7.3** All deliverables must be submitted by the deadlines in the RD Schedule or RA Schedule, as applicable. SDs shall submit 2 hard copies, as well as electronic forms of all deliverables to EPA.
- 7.4 Technical Specifications**
- (a) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format specified by the EPA Project Coordinator. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
 - (b) Unless as otherwise directed by EPA's project coordinator, spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format; and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.
 - (c) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <http://www.epa.gov/geospatial/policies.html> for any further available guidance on attribute identification and naming.
 - (d) Spatial data submitted by SDs does not, and is not intended to, define the boundaries of the Site.

- 7.5 Certification.** All deliverables that require compliance with this ¶ 7.5 must be signed by the SDs' Project Coordinator, or other responsible official of SDs, and must contain the following statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

7.6 Approval of Deliverables

(a) Initial Submissions

- (1) After review of any deliverable that is required to be submitted for EPA approval under the CD or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
- (2) EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

- (b) Resubmissions.** Upon receipt of a notice of disapproval under ¶ 7.6(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under ¶ 7.6(a), SDs shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring SDs to correct the deficiencies; or (5) any combination of the foregoing.

- (c) Implementation.** Upon approval, approval upon conditions, or modification by EPA under ¶ 7.6(a) (Initial Submissions) or ¶ 7.6(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the CD; and (2) SDs shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under ¶ 7.6(a) or

¶ 7.6(b) does not relieve SDs of any liability for stipulated penalties under Section XV (Stipulated Penalties) of the CD.

7.7 Supporting Deliverables. SDs shall submit each of the following supporting deliverables for EPA approval, except as specifically provided. The deliverables must be submitted, for the first time, by the deadlines in the RD Schedule or the RA Schedule, or any other EPA-approved schedule, as applicable. SDs shall develop the deliverables in accordance with all applicable regulations, guidances, and policies (see Section 10 (References)). SDs shall update each of these supporting deliverables as necessary or appropriate during the course of the Work, and/or as requested by EPA.

- (a) **Health and Safety Plan.** The Health and Safety Plan (HASP) describes all activities to be performed to protect on site personnel and area residents from physical, chemical, and all other hazards posed by the Work. SDs shall develop the HASP in accordance with EPA's Emergency Responder Health and Safety and Occupational Safety and Health Administration (OSHA) requirements under 29 C.F.R. §§ 1910 and 1926. The HASP should cover RD activities and should be, as appropriate, updated to cover activities during the RA and updated to cover activities after RA completion. EPA does not approve the HASP, but will review it to ensure that all necessary elements are included and that the plan provides for the protection of human health and the environment.
- (b) **Emergency Response Plan.** The Emergency Response Plan (ERP) must describe procedures to be used in the event of an accident or emergency at the Site (for example, power outages, water impoundment failure, treatment plant failure, slope failure, etc.). The ERP must include:
 - (1) Name of the person or entity responsible for responding in the event of an emergency incident;
 - (2) Plan and date(s) for meeting(s) with the local community, including local, State, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
 - (3) Spill Prevention, Control, and Countermeasures (SPCC) Plan (if applicable), consistent with the regulations under 40 C.F.R. Part 112, describing measures to prevent, and contingency plans for, spills and discharges;
 - (4) Notification activities in accordance with ¶ 4.3(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004; and
 - (5) A description of all necessary actions to ensure compliance with Paragraph 11 (Emergencies and Releases) of the CD in the event of an occurrence during the performance of the Work that causes or threatens a

release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.

- (c) **Field Sampling Plan.** The Field Sampling Plan (FSP) supplements the QAPP and addresses all sample collection activities. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. SDs shall develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988).
- (d) **Quality Assurance Project Plan.** The Quality Assurance Project Plan (QAPP) addresses sample analysis and data handling regarding the Work. The QAPP must include a detailed explanation of SDs' quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples. SDs shall develop the QAPP in accordance with *EPA Requirements for Quality Assurance Project Plans*, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006); *Guidance for Quality Assurance Project Plans*., QA/G-5, EPA/240/R 02/009 (Dec. 2002); and *Uniform Federal Policy for Quality Assurance Project Plans*, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005). The QAPP also must include procedures:
 - (1) To ensure that EPA and its authorized representatives have reasonable access to laboratories used by SDs in implementing the CD (SDs' Labs);
 - (2) To ensure that SDs' Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;
 - (3) To ensure that SDs' Labs perform all analyses using EPA-accepted methods (i.e., the methods documented in *USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis*, ILM05.4 (Dec. 2006); *USEPA Contract Laboratory Program Statement of Work for Organic Analysis*, SOM01.2 (amended Apr. 2007); and *USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration)*, ISM01.2 (Jan. 2010)) or other methods acceptable to EPA;
 - (4) To ensure that SDs' Labs participate in an EPA-accepted QA/QC program or other program QA/QC acceptable to EPA;
 - (5) For SDs to provide EPA with notice at least 28 days prior to any sample collection activity;
 - (6) For SDs to provide split samples and/or duplicate samples to EPA upon request;
 - (7) For EPA to take any additional samples that it deems necessary;

- (8) For EPA to provide to SDs, upon request, split samples and/or duplicate samples in connection with EPA's oversight sampling; and
 - (9) For SDs to submit to EPA all sampling and tests results and other data in connection with the implementation of the CD.
- (e) **Site Wide Monitoring Plan.** The purpose of the Site Wide Monitoring Plan (SWMP) is to obtain baseline information regarding the extent of contamination in affected media at the Site; to obtain information, through short- and long- term monitoring, about the movement of and changes in contamination throughout the Site, before and during implementation of the RA; to obtain information regarding contamination levels to determine whether Performance Standards (PS) are achieved; and to obtain information to determine whether to perform additional actions, including further Site monitoring. The SWMP must include:
- (1) Description of the environmental media to be monitored;
 - (2) Description of the data collection parameters, including existing and proposed monitoring devices and locations, schedule and frequency of monitoring, analytical parameters to be monitored, and analytical methods employed;
 - (3) Description of how performance data will be analyzed, interpreted, and reported, and/or other Site-related requirements;
 - (4) Description of verification sampling procedures;
 - (5) Description of deliverables that will be generated in connection with monitoring, including sampling schedules, laboratory records, monitoring reports, and monthly and annual reports to EPA and State agencies; and
 - (6) Description of proposed additional monitoring and data collection actions (such as increases in frequency of monitoring, and/or installation of additional monitoring devices in the affected areas) in the event that results from monitoring devices indicate changed conditions (such as higher than expected concentrations of the contaminants of concern or groundwater contaminant plume movement).
- (f) **Construction Quality Assurance/Quality Control Plan (CQA/QCP).** The purpose of the Construction Quality Assurance Plan (CQAP) is to describe planned and systemic activities that provide confidence that the RA construction will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the Construction Quality Control Plan (CQCP) is to describe the activities to verify that RA construction has satisfied all plans, specifications, and related requirements, including quality objectives. The CQA/QCP must:

- (1) Identify, and describe the responsibilities of, the organizations and personnel implementing the CQA/QCP;
 - (2) Describe the PS required to be met to achieve Completion of the RA;
 - (3) Describe the activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (4) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQA/QCP;
 - (5) Describe industry standards and technical specifications used in implementing the CQA/QCP;
 - (6) Describe procedures for tracking construction deficiencies from identification through corrective action;
 - (7) Describe procedures for documenting all CQA/QCP activities; and
 - (8) Describe procedures for retention of documents and for final storage of documents.
- (g) **O&M Plan.** The O&M Plan describes the requirements for inspecting, operating, and maintaining the RA, both before and after achievement of the PS. SDs shall develop the O&M Plan in accordance with *Operation and Maintenance in the Superfund Program*, OSWER 9200.1 37FS, EPA/540/F-01/004 (May 2001). The O&M Plan must include the following additional requirements:
- (1) Description of PS required to be met to implement the ROD;
 - (2) Description of activities to be performed: (i) to provide confidence that PS will be met; and (ii) to determine whether PS have been met;
 - (3) **O&M Reporting.** Description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to EPA and State agencies;
 - (4) Description of corrective action in case of systems failure, including:
(i) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or may cause a failure to achieve PS; (ii) analysis of vulnerability and additional resource requirements should a failure occur; (iii) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and (iv) community notification requirements; and

- (5) Description of corrective action to be implemented in the event that PS are not achieved; and a schedule for implementing these corrective actions.
- (h) **O&M Manual.** The O&M Manual serves as a guide to the purpose and function of the equipment and systems that make up the remedy. SDs shall develop the O&M Manual in accordance with *Operation and Maintenance in the Superfund Program*, OSWER 9200.1 37FS, EPA/540/F-01/004 (May 2001).
- (i) **Institutional Controls Implementation and Assurance Plan.** The Institutional Controls Implementation and Assurance Plan (ICIAP) describes plans to implement, maintain, and enforce the Institutional Controls (ICs) at the Site. SDs shall develop the ICIAP in accordance with *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites*, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012), and *Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites*, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012). The ICIAP must include the following additional requirements:
 - (1) Locations of recorded real property interests (e.g., easements, liens) and resource interests in the property that may affect ICs (e.g., surface, mineral, and water rights) including accurate mapping and geographic information system (GIS) coordinates of such interests; and
 - (2) Legal descriptions and survey maps that are prepared according to current American Land Title Association (ALTA) Survey guidelines and certified by a licensed surveyor.
- (j) **Periodic Review Support Plan.** The Periodic Review Support Plan addresses the studies and investigations that SDs shall conduct to support EPA's reviews of whether the RA is protective of human health and the environment in accordance with Section 121(c) of CERCLA, 42 U.S.C. § 9621(c) (also known as "Five-year Reviews"). SD shall develop the plan in accordance with *Comprehensive Five-year Review Guidance*, OSWER 9355.7-03B-P (June 2001), and any other relevant five-year review guidances.

8. SCHEDULES

- 8.1 Applicability and Revisions.** All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the RD and RA Schedules set forth below. SDs may submit proposed revised RD Schedules or RA Schedules for EPA approval. Upon EPA's approval, the revised RD and/or RA Schedules supersede the RD and RA Schedules set forth below, and any previously-approved RD and/or RA Schedules.

8.2 RD Schedule

	Description of Deliverable, Task	Included Supporting Deliverable	¶ Ref.	Deadline
1	PABS Pilot Test Work Plan		3.1	90 days after Notice of Authorization to proceed
2	PABS Pilot Test Report		3.1	90 days after all Pilot Test analytical data is validated
3	RDWP	HASP, ERP, FSP, QAPP, SWMP,	3.2 7.7	90 days after EPA's Authorization to Proceed
4	PDIWP		3.4	90 days after EPA's Authorization to Proceed
5	PDI Evaluation Report		3.4	90 days after all PDI analytical data is validated
6	Preliminary (30%) RD	CQA/QCP, O&M Plan, O&M Manual, ICIAP	5 7.7	120 days after EPA approval of Final RDWP
7	Pre-final (90/95%) RD	Same as for Preliminary RD	3.6	150 days after EPA comments on Preliminary RD
8	Final (100%) RD	Same as for Pre-final RD	3.7	60 days after EPA comments on Pre-final RD

8.3 RA Schedule

	Description of Deliverable / Task	¶ Ref.	Deadline
1	Award RA contract		90 days after EPA Notice of Authorization to Proceed with RA
2	RAWP	4.1	90 days after EPA Notice of Authorization to Proceed with RA
3	Pre-Construction Conference	4.2(a)	30 days after Approval of RAWP
4	Start of Construction		30 days after Approval of RAWP
5	Completion of Construction		
6	Pre-final Inspection	4.5(b)	15 days after completion of construction
7	Pre-final Inspection Report	4.5(d)	30 days after completion of Pre-final Inspection
8	Final Inspection		15 days after Completion of Work identified in Pre-final Inspection Report
9	RA Report	4.5(d)	60 days after Final Inspection
10	Monitoring Report	4.6(a)	
11	Work Completion Report	4.7(b)	
12	Periodic Review Support Plan	7.7(j)	Three years after Start of RA Construction

9. STATE PARTICIPATION

9.1 Copies. SDs shall, at any time they send a deliverable to EPA, send a copy of such deliverable to the State. EPA shall, at any time it sends a notice, authorization, approval, disapproval, or certification to SDs, send a copy of such document to the State.

9.2 Review and Comment. The State will have a reasonable opportunity for review and comment prior to:

- (a) Any EPA approval or disapproval under ¶ 7.6 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and
- (b) Any approval or disapproval of the Construction Phase under ¶ 4.5 (RA Construction Completion), any disapproval of, or Certification of RA Completion under ¶ 4.6 (Certification of RA Completion), and any disapproval of, or Certification of Work Completion under ¶ 4.7 (Certification of Work Completion).

10. REFERENCES

10.1 The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the two EPA Web pages listed in ¶ 10.2:

- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).
- (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
- (c) Guidance for Conducting Remedial Investigations and Feasibility Studies, OSWER 9355.3-01, EPA/540/G-89/004 (Oct. 1988).
- (d) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
- (e) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G-90/001 (Apr. 1990).
- (f) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).
- (g) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).
- (h) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).

- (i) Guidance for Conducting Treatability Studies under CERCLA, OSWER 9380.3-10, EPA/540/R-92/071A (Nov. 1992).
- (j) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. Part 300 (Oct. 1994).
- (k) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).
- (l) Remedial Design/Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).
- (m) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (n) Operation and Maintenance in the Superfund Program, OSWER 9200.1-37FS, EPA/540/F-01/004 (May 2001).
- (o) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, 540-R-01-007 (June 2001).
- (p) Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009 (Dec. 2002).
- (q) Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls (Apr. 2004).
- (r) Quality Systems for Environmental Data and Technology Programs -- Requirements with Guidance for Use, ANSI/ASQ E4-2004 (2004).
- (s) Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005).
- (t) Superfund Community Involvement Handbook, EPA/540/K-05/003 (Apr. 2005).
- (u) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (v) EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006).
- (w) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (x) USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4 (Dec. 2006).
- (y) USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2 (amended Apr. 2007).

- (z) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2008), available at <http://www.epa.gov/geospatial/policies.html> and http://www.epa.gov/geospatial/docs/National_Geospatial_Data_Policy.pdf.
- (aa) Summary of Key Existing EPA CERCLA Policies for Groundwater Restoration, OSWER 9283.1-33 (June 2009).
- (bb) Principles for Greener Cleanups (Aug. 2009), available at <http://www.epa.gov/oswer/greenercleanups/>.
- (cc) Providing Communities with Opportunities for Independent Technical Assistance in Superfund Settlements, Interim (Sep. 2009).
- (dd) USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration), ISM01.2 (Jan. 2010).
- (ee) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).
- (ff) Groundwater Road Map: Recommended Process for Restoring Contaminated Groundwater at Superfund Sites, OSWER 9283.1-34 (July 2011).
- (gg) Recommended Evaluation of Institutional Controls: Supplement to the "Comprehensive Five-Year Review Guidance," OSWER 9355.7-18 (Sep. 2011).
- (hh) Construction Specifications Institute's MasterFormat 2012, available from the Construction Specifications Institute, www.csinet.org/masterformat.
- (ii) Updated Superfund Response and Settlement Approach for Sites Using the Superfund Alternative Approach , OSWER 9200.2-125 (Sep. 2012)
- (jj) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012).
- (kk) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012).
- (ll) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), <http://www.epaosc.org/HealthSafetyManual/manual-index.htm>
- (mm) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).
- (nn) Guidance for Evaluating Completion of Groundwater Restoration Remedial Actions, OSWER 9355.0-129 (Nov. 2013).

(oo) Groundwater Remedy Completion Strategy: Moving Forward with the End in Mind, OSWER 9200.2-144 (May 2014).

10.2 A more complete list may be found on the following EPA Web pages:

Laws, Policy, and Guidance <http://www.epa.gov/superfund/policy/index.htm>

Test Methods Collections <http://www.epa.gov/fem/methcollectns.htm>

10.3 For any regulation or guidance referenced in the CD or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after SDs receive notification from EPA of the modification, amendment, or replacement.

Appendix D

(Financial Assurances)

**CERCLA Financial Assurance Sample Letter of Credit for Use in Connection with
Settlements**

NOTE: A letter of credit, as specified in the relevant settlement agreement, may be worded as follows, except that instructions in brackets should be replaced with the relevant information and the brackets deleted. Case teams should make sure that provisions in the letter of credit relating to EPA's ability to access funds guaranteed by the letter of credit are consistent with relevant settlement provisions.

[Letterhead of Issuing Institution]

IRREVOCABLE STANDBY LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: **[insert number]**

ISSUANCE DATE: **[insert date]**

MAXIMUM AMOUNT: **[\$[insert dollar amount]**

APPLICANT:

[Insert name of PRP/Settling Defendant]

[Insert contact person(s), title(s), and contact information (address, phone, email, etc.)]

BENEFICIARY:

U.S. Environmental Protection Agency Region **[insert number]**

c/o **[insert appropriate Regional official such as "Superfund Division Director"]**

[Insert contact information (address, phone, email, etc.)]

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. **[insert number]** in your favor, at the request and for the account of **[insert name of PRP/Settling Defendant]** (the "Applicant"), in the amount of **[\$[insert amount]** (the "Maximum Amount"). We hereby authorize you, the United States Environmental Protection Agency (the "Beneficiary"), to draw at sight on us, **[insert name of issuing institution]**, an aggregate amount equal to the Maximum Amount upon presentation of:

- (1) Your sight draft, bearing reference to this Letter of Credit No. **[insert number]** (which may, without limitation, be presented in the form attached hereto as Exhibit A); and
- (2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to that certain **[insert as appropriate: "Consent Decree," "Administrative Settlement Agreement and Order on Consent," or "Settlement Agreement"]**, dated **[insert date]**, **[insert as appropriate: civil action number for**

consent decrees or EPA docket number for administrative agreements], between the United States and **[insert settling parties]**, entered into by the parties thereto in accordance with the authority of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675, relating to the **[insert site name [operable unit]]**.”

This letter of credit is effective as of **[insert issuance date]** and shall expire on **[insert date that is at least 1 year later]**, but such expiration date shall be automatically extended for a period of **[insert period of at least 1 year]** on **[insert date that is at least 1 year later]** and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and the Applicant by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall immediately thereupon be available to you upon presentation of your sight draft for a period of at least 120 days after the date of receipt by both you and the Applicant of such notification, as shown on signed return receipts.

All notifications, requests, and demands required or permitted hereunder shall be given in writing, identify the site, and provide a contact person (and contact information).

Multiple and partial draws on this letter of credit are expressly permitted, up to an aggregate amount not to exceed the Maximum Amount. Whenever this letter of credit is drawn on, under, and in compliance with the terms hereof, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft in immediately available funds directly into such account or accounts as may be specified in accordance with your instructions.

All banking and other charges under this letter of credit are for the account of the Applicant.

This letter of credit is subject to the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce.

Very Truly Yours,

Date: _____

By [signature]: _____

Printed name: _____

Title: _____

Address: _____

Contact information: _____

**Exhibit A - Form of Sight Draft
[EPA LETTERHEAD]**

SIGHT DRAFT

TO: **[Insert name of issuing institution]**
[Insert name and title of contact person(s)]
[Insert address]

RE: Letter of Credit No. **[insert number]**

DATE: **[Insert date on which draw is made]**

TIME: **[Insert time of day at which draw is made]**

This draft is drawn under your Irrevocable Standby Letter of Credit No. **[insert number]**. I certify that the amount of the draft is payable pursuant to that certain **[insert as appropriate: “Consent Decree,” “Administrative Settlement Agreement and Order on Consent,” or “Settlement Agreement”]**, dated **[insert date]**, **[insert as appropriate: civil action number for consent decrees, or EPA docket number for administrative agreements]**, between the United States and **[insert settling parties]**, entered into by the parties thereto in accordance with the authority of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675, relating to the **[insert site name [operable unit]]**. Pay to the order of the United States Environmental Protection Agency, in immediately available funds, the amount of \$**[insert dollar amount of draw]** or, if no amount certain is specified, the total balance remaining available under such Irrevocable Standby Letter of Credit.

Pay such amount as is specified in the immediately preceding paragraph by **[insert payment instructions as appropriate, such as: “Fedwire EFT, referencing Site/Spill ID Number [insert number] [and DJ Number [insert number]]**. The Fedwire EFT payment must be sent as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read [D 68010727
Environmental Protection Agency]”]

The total amount paid shall be deposited by EPA in the **[insert site name [operable unit]]** Special Account to be retained and used to conduct or finance response actions at or in

connection with the site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

This Sight Draft has been duly executed by the undersigned, an authorized representative or agent of the United States Environmental Protection Agency, whose signature hereupon constitutes an endorsement.

By [signature]: _____
Printed name: _____
Title: _____
Address: _____
Contact information: _____

**CERCLA Financial Assurance Sample Performance Bond for Use in Connection with
Settlements**

NOTE: A surety bond guaranteeing performance or payment, as specified in the relevant settlement agreement, may be worded as follows, except that instructions in brackets should be replaced with the relevant information and the brackets deleted. Case teams should make sure that provisions in the bond relating to EPA's ability to either demand performance or access funds guaranteed by the bond (*see, e.g.*, paragraphs 3 and 5 below) are consistent with relevant settlement provisions.

[Letterhead of Bond Issuer]

PERFORMANCE BOND

Surety's Performance Bond Number: [insert number]
Date of Execution of Performance Bond: [insert date]
Effective Date of Performance Bond: [insert date]
Total Dollar Amount of Performance Bond: \$[insert dollar amount]

PRINCIPAL:

Legal Name: [insert name of PRP/Settling Defendant]
Address: [insert address]
Contact Person(s)/Information: [insert name and contact information (phone, email)]

SURETY:

Legal Name: [insert name of surety providing the bond]
Address: [insert address]
Contact Person(s)/Information: [insert name and contact information (phone, email)]

BENEFICIARY:

Legal Name: U.S. Environmental Protection Agency Region [insert #]
c/o [insert appropriate Regional official such as
"Superfund Division Director"]
Address/Contact Information: [insert address and contact information (phone, email)]

SITE INFORMATION:

Name and Location of Site: [insert site name [operable unit] and location] ("Site")
EPA Identification Number: [insert Site/Spill Identification Number]
Agreement Governing Site Work: [That certain [insert as appropriate: "Consent Decree,"
"Administrative Settlement Agreement and Order on
Consent," or "Settlement Agreement"] dated [insert date],
[insert as appropriate: civil action number for consent
decrees or EPA docket number for administrative

agreements], between the United States of America and
[insert settling parties] (the “Agreement”)]

KNOW ALL PERSONS BY THESE PRESENTS, THAT:

WHEREAS, said Principal is required, under the Agreement entered pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601-9675, to perform the “Work” as defined in such Agreement (hereinafter, the “Work”) and to fulfill its other obligations as set forth therein; and

WHEREAS, said Principal is required by the Agreement to provide financial assurance to ensure completion of the Work.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Principal and Surety hereto are firmly bound to the United States Environmental Protection Agency (EPA or Beneficiary), in the above Total Dollar Amount of this Performance Bond, for the performance or payment of the Work, which we, the Principal and Surety, bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, subject to and in accordance with the terms and conditions hereof.
2. The conditions of the Surety’s obligation hereunder are such that if the Principal shall promptly, faithfully, fully, and finally complete the Work in accordance with the terms of the Agreement, the Surety’s obligation hereunder shall be null and void; otherwise it is to remain in full force and effect.
3. Pursuant to and in accordance with the terms of the Agreement, and except as specifically provided in Paragraph 5 below, the Surety shall become liable on the obligation evidenced hereby only upon the Principal’s failure to perform all or any portion(s) of the Work, EPA’s subsequent notice of a Work Takeover, and the Principal’s failure to remedy to EPA’s satisfaction the circumstances giving rise to EPA’s issuance of such notice. At any time and from time to time upon notification by EPA (as specified in the Agreement) that a Work Takeover has commenced, the Surety shall, up to the Total Dollar Amount of the Performance Bond, promptly (and in any event within 15 days after receiving such notification):
 - (a) Commence to complete the Work to be done under the Agreement in accordance with its terms and conditions; or
 - (b) Pay to EPA funds in such amounts and to such person(s), account(s), or otherwise as EPA may direct.

If the Surety does not render such performance or payment set forth above within the specified 15-day period, the Surety shall be deemed to be in default of this Performance Bond and EPA shall be entitled to enforce any remedy available to it at law, in equity, or otherwise; provided, however, that if such default is susceptible of cure but cannot reasonably be cured within such 15-day period and provided further that Surety shall have commenced to cure such default within such 15-day period and thereafter diligently proceeds to perform the same, such 15-day period shall be extended for such time as is reasonably necessary for Surety in the exercise of due diligence to cure such default, such additional period not to exceed 90 days.

4. The liability of the Surety shall not be discharged by any performance, payment, or succession of payments hereunder, unless and until such performance, payment, or payments shall amount in the aggregate to the Total Dollar Amount of this Performance Bond, but in no event shall the aggregate obligation of the Surety hereunder exceed the amount of said sum.

5. The Surety may cancel this Performance Bond only by sending notice of cancellation to the Principal and to the Beneficiary, provided, however, that no such cancellation shall be effective during the 120-day period beginning on the date of receipt of the notice of cancellation by both the Principal and the Beneficiary, as evidenced by return receipts. If after 90 days of such 120-day period, the Principal has failed to provide alternative financial assurance to EPA in accordance with the terms of the Agreement, EPA shall have the right to (up to the Total Dollar Amount of this Performance Bond) demand performance of the Work or draw on the guaranteed funds.

6. The Principal may terminate this Performance Bond only by sending written notice of termination to the Surety and to the Beneficiary, provided, however, that no such termination shall become effective unless and until the Surety receives written authorization for termination of this Performance Bond by the Beneficiary.

7. Any modification, revision, or amendment that may be made to the terms of the Agreement or to the Work to be done thereunder, or any extension of the Agreement, or other forbearance on the part of either the Principal or Beneficiary to the other, shall not in any way release the Principal and the Surety, or either of them, or their heirs, executors, administrators, successors, or assigns from liability hereunder. The Surety hereby expressly waives notice of any change, revision, or amendment to the Agreement or to any related obligations between the Principal and the Beneficiary.

8. The Surety will immediately notify the Beneficiary of any of the following events: (a) the filing by the Surety of a petition seeking to take advantage of any laws relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts; (b) the Surety's consent to (or failure to contest in a timely manner) any petition filed against it in an involuntary case under such bankruptcy or other laws; (c) the Surety's application for (or consent to or failure to contest in a timely manner) the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator, or the like of itself or of all or a

substantial part of its assets; (d) the Surety's making a general assignment for the benefit of creditors; or (e) the Surety's taking any corporate action for the purpose of effecting any of the foregoing.

9. Any provision in this Performance Bond that conflicts with CERCLA or any other applicable statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or legal requirement shall be deemed incorporated herein.

10. All notices, elections, consents, approvals, demands, and requests required or permitted hereunder shall be given in writing to (unless updated from time to time) the addressees shown on the first page of this Performance Bond, identify the Site, and provide a contact person (and contact information). All such correspondence shall be: (a) effective for all purposes if hand delivered or sent by (i) certified or registered United States mail, postage prepaid, return receipt requested or (ii) expedited prepaid delivery service, either commercial or United States Postal Service, with proof of attempted delivery, to the relevant address shown on the first page of this Performance Bond; and (b) effective and deemed received upon the earliest of (i) the actual receipt of the same by personal delivery or otherwise, (ii) one business day after being deposited with a nationally recognized overnight courier service as required above, or (iii) three business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, election, consent, approval, demand, or request sent.

11. The Surety hereby agrees that the obligations of the Surety under this Performance Bond shall be in no way impaired or affected by any winding up, insolvency, bankruptcy, or reorganization of the Principal or by any other arrangement or rearrangement of the Principal for the benefit of creditors.

12. No right of action shall accrue on this Performance Bond to or for the use of any person other than the Beneficiary or the executors, administrators, successors, or assigns of the Beneficiary.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Principal and Surety have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby represent, warrant, and certify that they are authorized to execute this Performance Bond on behalf of the Principal and Surety, respectively.

FOR THE PRINCIPAL:

Date: _____

By [signature]: _____

Printed name: _____

Title: _____

State of **[insert state]**

County of **[insert county]**

On this **[insert date]**, before me personally came **[insert name of PRP/Settling Defendant's signatory]** to me known, who, being by me duly sworn, did depose and say that she/he is **[insert title]** of **[insert name of PRP/Settling Defendant]**, the entity described in and which executed the above instrument; and that she/he signed her/his name thereto.

[Signature of Notary Public]

FOR THE SURETY:

Date: _____

By [signature]: _____

Printed name: _____

Title: _____

State of **[insert state]**

County of **[insert county]**

On this **[insert date]**, before me personally came **[insert name of Surety's signatory]** to me known, who, being by me duly sworn, did depose and say that she/he is **[insert title]** of **[insert name of Surety]**, the entity described in and which executed the above instrument; and that she/he signed her/his name thereto.

[Signature of Notary Public]